

East India - East India Company

14

THE

DEBATES

Pam 23

AT THE

EAST-INDIA-HOUSE,

ON WEDNESDAY, THE 17TH OF DECEMBER, 1794,

ON THE

ADJOURNED CONSIDERATION

OF

MR. TWINING'S MOTION,

"That no Director be allowed to carry on any Trade or Commerce to or from
"India, directly or indirectly, either as Principal or Agent."

REPORTED BY WILLIAM WOODFALL,

L O N D O N :

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1794.



EAST-INDIA HOUSE.

GENERAL COURT.

WEDNESDAY, DECEMBER 17, 1794.

A QUARTERLY GENERAL COURT of Proprietors was this day held, when a Dividend of $5\frac{1}{2}$ per cent. on the Capital Stock of the Company, was declared from Midsummer last, to Christmas next.

The same was proposed, after the Minutes of the last Court had been read, and unanimously agreed to.

Mr. *Henchman* then rose and observed, that as it was a Quarterly General Court, he trusted he might be allowed to ask, as a matter of course, whether a statement of the Participation Fund, upon which the Dividend was declared, agreeable to the provisions of the late Act of Parliament, was prepared, and ready to be laid before the Court, to prove the capacity of the Company to make such a Dividend as had been declared.

The CHAIRMAN (Mr. Devaynes) in reply said, that owing to some error, or misunderstanding, the account was not finally adjusted, but

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that

that it would be ready to be laid before the next Quarterly General Court.

Mr. *Henchman* desired to know, whether both Accounts, viz. that of the year 1793, and the year 1794, would each be ready to be presented at the next Quarterly General Court?

The CHAIRMAN said, that both, he had every reason to believe, would then be ready.

Mr. *Jackson* desired to know, if it were the General Practice of the Court of Directors, to transmit to his Majesty's Commissioners for the Affairs of India, the Minutes and Resolutions of the General Courts?

He was answered by the CHAIRMAN, that it was the general practice.

Mr. *Jackson* then asked, if the Secretary could say, whether there had been any exception to the General Rule, in the instances of *May 9, 1792, Sept. 26, 1792; April 4, 1793; and March 19, 1794*? All days upon which the Proprietors understood very important discussions had taken place, respecting the mode of conducting the Shipping Affairs of the Company.

Mr. *Jackson* was answered, that there had been no exception to the general rule, in the instances referred to.

Mr. *Baber* begged to be informed, whether the institution of Courts of Judicature at Madras and Bombay, upon the same principle as that of the Supreme Court at Bengal, of which an out-door report had reached him, had been in the contemplation of the Court of Directors; and whether any Proceedings had been had upon the subject, at their Board; as he could hardly suppose that any step would have been taken in so extraordinary a business, without consulting the Proprietors?

The CHAIRMAN replied, that some conversation had passed upon the subject, among the Directors.

Mr.

Mr. *Baber* desired an explicit answer.

Mr. *Elphinstone* (the Director) said, that the Hon. Gentleman might rest assured that no such business had yet been before the Court, or appeared upon their Minutes.

Mr. *Baber* expressed it as the wish of several Proprietors, that no such business should be attempted, without consulting with a General Court; and desired to know whether, if any proceeding should be held upon the subject, by the Court of Directors, it was meant to submit such proceeding to the General Court of Proprietors, previous to any measure being taken respecting it?

The CHAIRMAN said, it was impossible for him to take upon him to say what the Court of Directors would do, when the subject should come under their consideration.

Mr. *Prinsep*, hoped that he also might be permitted to ask a Question, which was, whether, in the publication of the next Reports on Shipping, the letter and copy of a Memorial relative to an offer to build Ships in India, which he had lately sent to the Directors, were intended to be printed for the use of the Proprietors?

On the CHAIRMAN's replying in the *negative*

Mr. *Prinsep* stated, that these were public papers; one of them a conditional Tender of Tonnage, and the other a representation to his Majesty's Ministers, supported by documents in proof, and both intended to throw a light upon the general subject of hired Tonnage, which possibly might be worthy attention. He therefore must request the sense of the Proprietors, whether they ought not, in common with other relevant matter, to be printed for the next General Court.

Mr. *Henchman*, Mr. *Lusington*, Mr. *Jackson*, and others, supporting this claim, and saying, that all papers of a public nature ought to be printed for the use of the Proprietors, the Court assented, and the whole were ordered to form part of the next Report.

As soon as the preceding Questions and Replies were at an end, many Proprietors called on Mr. *Twining* to resume his argument of the

18th of June last, on the subject of his Motion relative to *Directors Trading to India*, the further consideration of which had been adjourned to that day, by a Vote of a General Quarterly Court.

Mr. *Twining* rose, and was proceeding to address the Court, when

Mr. *Serjeant Watson* begged pardon for interrupting the Honourable Gentleman, but before the Hon. Gentleman had entered into his argument, he hoped he might be permitted to enquire, whether some measures had not been taken in the Court of Directors, relative to the subject of the Question which the Hon. Proprietor was about to open, or the manner in which it had been treated in the Speech printed in his name; and to suggest, that if so, it would probably be acceptable to the Court, and particularly so to him, that every Resolution of the Directors, and the papers which were before them, as the ground of any Resolution, should be read before he began.

Mr. *Twining* said, he conceived that the regular course of proceeding, would be for him to re-state so much of his former argument, as might be necessary to explain the grounds of his Motion to the Proprietors present, and he desired to be allowed to conduct himself in his own way, which he considered as a matter of right. With regard to any thing that might have passed in the Court of Directors, he knew nothing of it; he knew what passed in that Court, in common with other Proprietors.

Mr. *Serjeant Watson* said, he did not know what had passed in the Court of Directors, his was but hear-say information, and therefore he had put his proposal in the shape of a Question; and it should seem as if he had been misinformed, by the Hon. Gentleman's professing not to know any thing of the matter; for he heard, at the same time, that the papers to which he alluded, had been sent him; and if he mistook not, at his own requisition; and others, as well as himself, must have seen them in print. But as the two things he wished for, were complete information to the Court, and that the Hon. Gentleman should have the best opportunity of setting himself right with respect to parts of his former speech, that conveyed an insinuation against the Directors, and were open to much animadversion; if he did not wish for an opportunity, which, according to the learned Serjeant's opinion

of him, he thought he would have cheerfully embraced, he was perfectly indifferent whether the Papers were read then, for the information the papers contained could, and must be had in the course of the day.

Mr. Metcalfe (a Director) desired the Court to understand, that he by no means felt what the learned Serjeant had alluded to, as an insinuation against him, nor did he believe his Brethren in the Direction, felt themselves to be implicated in any censure, that might be supposed to be conveyed through the medium of the Hon. Proprietor's former Speech.

Mr. Tolfrey rose, and wished so far to take part in that preliminary conversation, as to be allowed to declare, that he felt himself rather surprised, that the Honourable Gentleman should have said, that he was unacquainted with what had passed on the Subject in the Court of Directors, because he had understood that the Honourable Gentleman had himself procured and obtained copies of the Proceedings.

Mr. D. Scott (a Director) here rose and said, I conceive, Sir, that Gentlemen are not acquainted with what has passed since last Court, otherwise they would certainly not only allow, but call for every Paper to be read, that regards the Question of the Day, before they enter into the discussion of that Question. I am sure, Sir, that if Gentlemen will but attend to what I have to say, they will find that before we can get to the Question of Agency, the ground must be cleared of a far more important one, which the Mover of that Question has forced into the way. I say, Sir, of far more importance, for there have been a variety of accusations brought by him, against some certain Directors behind your Bar, any one of which, is of ten times greater consequence to the Company, than the Question of Agency. To mention only one of these, Sir, I say, if there is any Director who has been base enough to alter an Oath for his own private purposes, which had been previously carried through this Court in a different form, and approved by Parliament; and if he further has had sufficient influence to have the alteration continued, in direct opposition to the Court of Directors, Court of Proprietors, and even the Legislature itself, an act which (however impossible it may appear to some to be) he yet certainly has been charged with; from such an infamous

famous character, I insist that it must be clear to all, that far greater, and more immediate evils might be expected, than from the eventual ones suggested as possible to happen, by open Agency, or any trade whatever. Until such accusation is brought to bear upon *one* particular Director by name, the whole Court of Directors are certainly implicated; nor can it be possible that there can be a Director behind the Bar, feeling as a Gentleman, but who must feel himself implicated in the accusation. If there is such a character, before any other Question is tried, he should be expelled from the Direction, with the infamy attaching to such conduct. The Papers proposed to be read, will place the whole in a proper point of view; and the Accusations are so closely connected with the Question of Agency, that it is impossible for any person unacquainted with the first, to be competent to judge upon the latter.

Mr. Twining rose again, and again attempted to speak, when

Mr. Scott again rose and said, I appeal to the candour of the Court, now when they find that a Pamphlet has been published by the Mover of the Question of Agency, to darken and destroy the fame of one of their Directors, from whose transactions this Question of Agency was made by the Mover to originate, whether it would be decent to refuse a reading of such Papers as might throw light upon that Character, in preference to any thing else?

If an unfavourable impression has taken place, is it not but fair that a short refutation by the Court of Directors, should be heard by those Proprietors who have read that Pamphlet? The honour of one of your Directors, has been struck at in his absence, under the cloak of a Question of Agency, and the honour of the Court of Proprietors, obliges them to give it immediate investigation.

While a Director acts honourably, and studies with assiduity, the interests of the Company, he ought to have the support of this Court; but unless these Papers are read previous to any other Question coming into Debate, he cannot be said to have been treated with common candour.

Just as Mr. Twining recommenced his Address to the Court,

Sir Francis Baring said, that on every reasonable and fair ground, he hoped the Court would see the necessity of agreeing to have the Papers,
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that had been referred to by the Hon. Director near him, read, previous to proceeding a single step further. The Question stated, was not a naked Question; the character of all the Directors was concerned; the Book of the Hon. Gentleman who was so anxious to resume his argument, had been industriously circulated, and it could not be considered in any other light, than an attack on the Directors in general, because if one Director was guilty, all of them were implicated in the same guilt. It was necessary, therefore, to extract the poison, which the Hon. Gentleman's Pamphlet had infused into the minds of those Proprietors who had read it, previous to their proceeding to the discussion of a subject, which ought, in common justice, to be entered into free from prejudice of every kind.

Mr. *Lushington* said, the Letters of the Solicitor and Mr. Scott, but not the Minutes of the Court, might either be read then, or the whole might be read afterwards.

Mr. *Twining* resumed his argument with some general observations on the importance of his object, declaring that it was founded on no violence of feeling in respect to individuals, but merely on his real regard for the good of the Company and his earnest wish to promote their essential interests. With respect to himself, he was not insensible to favour, nor unwilling to confess that he was under obligations to several of the Directors, but on the present occasion he was actuated by no selfish motive, and therefore he ought not to suffer the impulse of private friendship to stand in the way of publick duty. For his own part, he had nothing to expect from the result of the question. Had he felt an interest of that sort it would perhaps have shaken his fortitude. An individual, acting for himself, in his private capacity, might, and indeed ought, to return gratitude for obligation, but the case was different, where a publick Question was brought forward on publick grounds; there the individual, and his particular inclinations, necessarily sunk to nothing, in comparison with the magnitude of the object in which he had engaged; nor was the main Question to be diverted by his misconduct, or any mistake or impropriety that he might accidentally have committed in his mode of introducing it. An accurate investigation of his conduct, was not necessary to the thing itself; because, admitting, for the sake of argument his motive to have been unworthy, it could make no difference as to the merit of the Question; the Question would still be the same; the same in object, the same in importance, the same in interest! It was these great considerations only, which ought to excite, and to obtain the attention and judgement of the Court; and that attention, and that judgement, he flattered

tered himself, he should experience, in which case, he had little doubt that his motion would meet with success.

The Question to be considered, was, "*That no Director be allowed to carry on any Trade or Commerce to or from India, either directly or indirectly, either as Principal or Agent.*" To prove the propriety of this Motion, and to shew that it was not understood by the Directors themselves, that the right of trading to India, either as Principals or Agents, was given them, or intended to be given them by the new Act of Parliament, it was only necessary for him to refer to the first and second point of his former argument, in which, he flattered himself, he made it perfectly clear, from the authentic and unquestionable documents, which he had, on that occasion, referred to, viz. the Minutes of the Five Courts of Directors, (the Courts held on the 4th of September, the 11th of September, the 2d of October, the 4th of December, and the 17th of December,*) and likewise the case submitted to Mr. Rous's Opinion, and Mr. Rous's Opinion upon that Case, together with the two Questions put to the Attorney and Solicitor General, and Mr. Rous (at the end of a long Case); *the one Question*, relative to "the legality of Directors Trading to and from India, either on their own account, or as Agents for others;" *the other*, relative to "the competency of the Company to make a new By-law, declaring any person carrying on such Private Trade, either as a Principal or Agent, incapable of being elected a Director; and declaring the Office of any Director void, who, after his Election, shall carry on such Private Trade," and the Answers given to those Questions by the Attorney and Solicitor General, and Mr. Rous.

Those Documents, Mr. Twining said, had, at the Court held in June last, been read, and the points which he declared and considered as having been substantiated by them were, the *one*, "That even after the Act of Parliament had passed, there were Gentlemen in the Direction, who were not aware that it gave to them, the right of trading to India in their private capacities;" the *other*, "that when the right of a Director to Trade to India in his private capacity, had been ascertained by high legal Authority, there still were many Gentlemen in the Direction (even ten out of twenty) who thought it would be proper to refer that subject to a Court of Proprietors." To those two points, he meant only, on the present occasion, to add a few observations

* Vide Report of the Debate of June 18, pages 22, 23, 24, 25, 26.

servations, which appeared to him to be worthy the attention of that Court.

That it was highly necessary for the General Court to take some effectual measure to prevent Directors from exercising a *right*, which he must still maintain, they never had it in their contemplation to give them, when the new Charter, and the Clauses of the Act of the 33^d of the King, were under discussion, and which, from the two ascertained points he had just stated, it was clear that they themselves were not aware was given to them; let Gentlemen recollect the *Commercial situation* of the Directors, the relation they stood in to the Proprietors, and the important duties and functions they were bound to discharge. A Director was, in the first place, bound to apply all the information he could obtain, for the benefit of the Company; and wise regulations had been provided, to enable him to possess himself with facility, of much more early and important information, on every part of the Commerce of the Company, than any individual Proprietor could get at.

By the last Act of Parliament, the Company were obliged to relinquish their Monopoly, and to open, to a certain extent, that Commerce, which they had before enjoyed exclusively. It became, therefore, more than ever, the duty of the Directors to watch over the Trade of the Company, to see that the extent of Private Trade, allowed by the Act of Parliament, was fairly carried on, that no abuses were practised, nor any improper advantage taken by the Private Traders, to the detriment of the Company. Could any man reasonably expect, that any but persons perfectly disinterested, could execute such a Duty with impartiality and justness, and could a Director, who participated himself in that Private Trade, be deemed and considered as a disinterested individual? It was easy to compliment Gentlemen in the Direction on their honour and character; it was equally far from his intention, or his idea, to question either the honour or character of any Gentleman behind the Bar, but the present was not a Question of Character, nor could it be compromised on mere grounds of personal politeness, or individual good opinion. It must be tried by other tests, by the test of human nature, by the known passions, affections, and feelings of mankind. Who would undertake to say, that when Private Interest was opposed to Public Duty, however upright the in-

dividual in question, that Private Interest would most unavoidably produce prejudices, that must influence the judgement in the discharge of Publick Duty; it was not in human nature to be otherwise. Let the Company look to the policy of other Corporate Bodies; no Banker was admitted into the Bank Direction, because it was foreseen that the moment a Banker became a Governor of the Bank, there was a probability of his making his power and influence subservient to the service of his own Banking House. In like manner, a person concerned in an Assurance Office, was not allowed to be a Director of an Assurance Company. And yet no Gentleman complained of the exception in either instance, as a matter of personal imputation, or personal offence; the reason and grounds of the exception were obvious, and the good sense and propriety of the exception, were universally allowed, and universally submitted to. Why should not the East India Company adopt a similar policy, and thus provide a preventive, instead of waiting till an evil, that might be reasonably expected to take place, did happen, and had spread to a size beyond the reach of remedy?

That the *right* in Question had never been before thought of by Directors, Mr. Twining said, was indisputable, because no Private Trade had been permitted under the old Charter; and that it was not expected to be permitted to the Directors under the new, was clear, from their own sense of the subject, to be collected from the Minutes of the five Courts of Directors to which he had before referred. In fact, the Right was incompatible with the interest of the Company; it had been hitherto unknown, and was directly contrary to the general spirit of the Act of the last year. In order to prove this assertion, Mr. Twining briefly re-stated his former argument respecting the Clause of the Bill of 1793, marked *M. M.* in which the form of the new Oath, to be taken by Directors, had been contained; and it was expressly stated, that every person elected a Director, should, "within ten days next after his election, and before he should take that office upon him, *over and besides* the Oaths already prescribed, &c. take the following Oath," meaning the new Oath, the form of which followed. The words *over and besides* the Oaths, &c. he contended could not have been made use of, but to shew that the old Oaths were to be taken as well as the new, and he must, he said, still think, that the alteration which took place with respect to the Oath, and which altered the whole operation

operation and effect of the Act, in regard to the Directors, had not the concurrence of the General Court, and was not understood even by the Directors themselves.

With regard to the Motion itself, Mr. Twining said, he had given it every consideration in his power, since he first submitted it to the General Court; he had used every possible endeavour to collect information on the subject, and he solemnly declared, that if the result of his deliberation and enquiries, had been a conviction that he had formed, and acted (as far he had hitherto proceeded) on an erroneous opinion, he would most readily have apologized for his conduct, because he should never be ashamed of publicly confessing an error in judgment, and treading back the steps into which his mistake might have inadvertently led him; but so far from having found reason to change his opinion in consequence of his further consideration of the subject, he was more than ever convinced, that he was correct in thinking, that however, or under whatsoever circumstances, the alteration of the Oath had obtained, which gave the Directors the right to trade to and from India, as Principals or Agents, that alteration could not be suffered to exist unrestrained, with safety to the Company's interests. Fully satisfied as he was of the soundness of the principle, and of the importance of maintaining it on public grounds, he should feel it to be equally scandalous in his own mind, and disgraceful, to abandon it on the impulse of any private motive, as it would be unmanly and dishonourable to persist in it under doubt or uncertainty, or with a view to gratify feelings of a personal or a malicious nature.

He again protested that he was not influenced by such base and infamous motives; according to his conception, the Motion involved in it the interest of Proprietors, and the honor and credit of Directors, in an equal degree: and where that was the case, no man, who was a well-wisher to either, would deem it honourable to shrink from his duty. As he had already said, he believed the alteration of the Oath had escaped the notice of the General Court, who had not given it their sanction; but clear it was, that a party very materially interested, viz. the *Private Traders*, must have understood, that the Private Trade allowed by the Act, was to be governed by a system of equality, and consequently that Directors were *not* to trade themselves; for no man of common sense, could imagine, that had they entertained an idea to the contrary, they would silently have submitted to let those participate in the Trade,

Trade, who, from situation, from influence, and from power, were so capable of proving, and so likely to prove, their most dangerous rivals and competitors. Nor was it the Private Traders alone, properly so called, who were likely to sustain injury, by Directors being allowed to carry on Trade to India, either as Principals or Agents; the commerce of the Captains and Officers of the Company's Ships, would be ruined by it, and the fair emoluments arising from their Privilege, which those meritorious Servants of the Company had hitherto enjoyed, were entitled to the countenance and protection of the General Court.

Another, and an important consideration, Mr. Twining said, was the credit and respectability of the Directors, not in their characters as men or as Merchants, but in their characters most immediately interesting to that Court, and most peculiarly within its cognizance, viz. their character as East-India Directors. An Honourable Baronet in the Direction (Sir Stephen Lushington) had at a Court, held in the course of the year, observed, "that the confidence of the Proprietors was absolutely necessary to the Directors, and that where that confidence was withheld, or denied, it was scarcely possible for the Directors to discharge the duties of their trust, with satisfaction to themselves, or those, whom they represented." He readily admitted the justness of the observation, but it must at the same time, strike every Proprietor that Directors ought to be in a situation to deserve confidence, and that every man, in his private concerns, adopted that principle, and did not readily give his confidence, if there was any thing in the situation of his delegate, which led him to entertain jealousy or suspicion of his faithful discharge of his trust. But there was another sort of confidence, Mr. Twining observed, equally worthy of observation, and equally important; and that was the confidence that ought to exist between Director and Director. Without that confidence it was impossible for the Gentlemen behind the Bar to do their duty to the Proprietors. If one Director carried on Trade to and from India as a Principal or an Agent, and another did not, the very end and object of consultation for the promotion of the general interest of the Company, were rooted up and destroyed. When a great Question respecting the Private Trade, should come under consideration in the next room, how could the Director who was not concerned in the Private Trade, *directly or indirectly*, communicate his thoughts upon the subject to the Director sitting next to him, whom he might know to be acting, either as a Principal, or as Agent, in that Trade? The unbiassed and impartial thoughts of the Director, not concerned in the Private Trade, must necessarily

cessarily be checked by the reflection, that he could not safely communicate his thoughts to the Director, who was concerned in the Private Trade, lest that Director, having a personal interest in the subject under consideration, should immediately withdraw his thoughts from the main object before the Court, viz. an endeavour, by free consultation, and unrestrained collision of sentiments and opinions, to fix upon the most probable mode of carrying the matter in Question into effect, in the manner most likely to promote the general interest of the Company, and turn his attention altogether to the opposite, and very different consideration, how he might best use the communication for his own private interest and advantage. Would not the Director who was acting in such consultation for the interest of the Company alone, be tempted to withhold his opinions and observations altogether from his colleagues, lest the Director next to him, whom he knew to be a great Private Trader or Agent should prefer employing the result of their discussion, to advance those private speculations, which such knowledge must insure success to, rather than for that Company, whose business he was merely attending in the routine of public duty? It was not doing violence to probability, Mr. Twining said; sure he was, not to possibility, to put such an hypothetical case, and where, on a consultation for the good of the Company, such disadvantages might either probably or possibly arise from a Director's being concerned, either directly or indirectly, in the Trade to or from India, it would, he presumed, be allowed him, that it fell fairly within the province of his argument to state them.

Such observations as had occurred to him, since he last troubled the Court on the subject of his Motion, and appeared to be material, he had stated in the course of what he had that day said; neither on the former occasion, nor on the present, had he, he once more declared, any personal object. His argument and his Motion were not aimed at a particular Director; as on his own part, he looked to no other individual advantage from the Company, but such as he was entitled to derive, in common with every other Proprietor, so on that of the Direction he was willing to give credit to all the Gentlemen behind the Bar, for pure honour, and the most upright intentions; he wished merely to take away temptation, and that there should not exist a ground of jealousy, being convinced, that all men were liable to the same infirmities, and that even the most tried integrity, and the firmest minds, could not always stand proof against the demon *self-interest*, whose powerful machinations, and irresistible influence, sometimes served to shew, in a striking manner, the weakness of human strength, and the folly of human wisdom.

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Mr. Twining said, if the Directors thought they were not sufficiently recompensed for the time and trouble that a due attention to the conduct of the Company's concerns necessarily called for, by their salaries, the respectability of their office, and the fair and honourable patronage that belonged to it, he should be extremely ready to join in voting them an increase of allowance, but their own honour and the interests of the Company made it every way improper, that they should be permitted to increase the value of their situations as Directors, by such profits as they might derive from trading to or from India, either as Principals or Agents.

He added some other short arguments, very ably put, to prove that a Director trading to or from India, or acting as an Agent, was disgraceful and dishonourable, and concluded with saying, that from a consciousness of the propriety of his Motion, he had hoped it would have been brought forward by the Directors themselves. He even still hoped that some Gentleman behind the Bar, would do him the honour to second him; if it were only that self-interest should not be thought the principle of all Directors; should that expectation fail, he still had the happiness to know, that a respectable Gentleman near him, was ready to second and support him.*

The Motion was in the following words: and was stated in the *Report of the Debates of June 18.*

THAT NO DIRECTOR BE ALLOWED TO CARRY ON ANY TRADE OR COMMERCE TO OR FROM INDIA, EITHER DIRECTLY OR INDIRECTLY, EITHER AS PRINCIPAL OR AGENT.

Mr. *Elphinstone* (a Director) rose to second the Motion. He said, he could not have conceived it would have met with any objection or opposition, its propriety was so self evident. No motion could have

* The Reporter has rather aimed at giving in his own words the sense and substance of Mr. Twining's argument, as it impressed him on hearing it in Court, than attempted to follow it in detail. Mr. Twining published his former speech himself, and he designs probably to publish what he said on the 17th of December last; the Reporter therefore flatters himself that he has done his duty sufficiently, if it shall be found that he has preserved the likeness, and neither misrepresented the facts stated by Mr. Twining, nor perverted his meaning.

have been brought forward more fairly or more honourably, and when it was originally produced, many Hon. Gentlemen endeavoured to parry it, but no one attempted to meet it fairly, or give a direct answer to the arguments urged in its support. He declared he wished his Brethren behind the Bar, had themselves brought forward the question, being convinced that the Directors ought neither to trade on their own account, nor act as Agents. It had been said, on a former day, that it would exclude every mercantile Gentleman, from the direction; he did not feel the force of that assertion, nor could he think it possible to be the effect. At any rate, every Gentleman, who was a candidate for or obtained a seat in the Direction, would be upon a footing. A variety of reasons could he said, be stated, to shew the strong impropriety of India Trade or Agency and the office of a Director being connected, and to prove that the interest of a Director, acting as an Agent, and the duty he owed to the Proprietors, to be utterly incompatible. Suppose, for instance, that a Director acted as an Agent, would he not take care, that the goods he was commissioned to export to India, should go in the first ship; whereas other Agents would not have the same opportunity of shipping their Commissions equally early? In fact, the superior advantages that must result from employing a Director as an Agent, in preference to Merchants out of the Direction, were so obvious, that they would be soon found out and understood in India; the consequence of which, he would venture to predict, would be, that *Eight-tenths* of all the Agency, would center in that house. Mr. Elphinstone denied that Agency had ever vested in Directors, or that the test of experience could be resorted to as an argument in its justification; because as there had, in point of fact, existed no legal Private Trade to and from India, before the opening made for it by the last Act of Parliament, there could not have been any Agency whatever. In one and the same point of view, he considered the exercise of the Private Trade by Directors, who must, if that were permitted, be in a constant state of opposition to the Company's Interests, and must have an advantage over every other Private Trader, from their better information, and superior power in the conduct of their own Indian concerns. Let them look to the prudent precaution of other Corporate Bodies. A Banker, as had been observed, was not admitted into the Bank Direction, nor was any Insurance Broker, or Under-writer, suffered to be a Governor of an Insurance Company. The reason was, lest the private interest of the one or the other, should clash with the general Interests of the Com-

Company, and their power as Directors and Governors, be perverted to the furtherance of their own views, to the prejudice of the objects of the respective Companies. Why should not the East India Company adopt a similar policy, and take the same precaution, where similar evils were to be dreaded?

The Court, Mr. Elphinstone observed, would do well to recollect that the Company, and the Private Traders, had always been in a state of competition, and that the Private Traders had been so far powerful competitors, that on almost every struggle, (particularly during the discussion of the late Charter) the Interest of the Private Trader had prevailed, to the injury of the Company; if that had been the case, when the Private Trade was in the hands solely of private individuals, how much more was to be dreaded from Directors acting as Private Traders? Another consideration, which the Hon. Proprietor had very properly brought forward, he said, was the injury that must result to the Company's Officers and Commanders of Ships, if the practice of Directors being allowed to be Private Traders, or to act as Agents, was authorised. That description of the Company's Servants, merited their attention; they were, in his opinion, by no means adequately remunerated. Why, then, oppose a new obstacle to their interests, and an obstacle pregnant with such mischievous consequences to the interests of the Company itself? The Owners of Ships also would have cause for complaint, on more grounds than one.

No Gentleman, Mr. Elphinstone said, could be so blind, as not to see what use, for purposes irreconcilable to the Company's Interests, might be made of Directors being permitted to act as Agents; if an individual Merchant in India, had a point to carry in the Court of Directors, and wished to have the good wishes of a Gentleman present at such discussions, as the subject might call for, he certainly would not act so rashly, as to insult the honourable feelings of a Gentleman in the direction, by the offer of a bribe; but he might send him a Commission in the fair way of business, and who would undertake to say that a considerable Commission would not effectually answer the purpose of the Person in India, who had a particular point to carry? Indirect influence they all knew, would operate more powerfully, than any other species of bias; and if Directors were suffered to carry on trade to and from India, on their own account, or to act as Agents for persons

sons in India, Mr. Elphinstone contended, that they should see Candidates start for a seat in the Direction, not for the sake of the Patronage, that fairly and honourably belonged to the office of a Director, and not even for the sake of the respectability of the Office, but for the sake of the superior advantages they might, in the situation of Directors, derive from Private Trade, or Agency.

Mr. Elphinstone put the case that Copper, or any given species of Merchandize, should be recommended by their Servants in India, as a proper article to be sent out upon the Company's account, and the Director, in his capacity of Private Trader, or Agent, should happen to have speculated upon the same Article; would it not be natural, however improper, in such a Director, when sitting in Council upon the Company's Investment, to incline against sending an Article which must destroy and ruin his own private speculation, however advantageous it might be to the Company? He added various other arguments in the same style of reasoning, and said, he approved of the Motion, because he was convinced it was founded on good sense and policy; and he hoped the Court would see it in the same light, and concur in its support, as the salutary consequence of its being carried, must be, that every Director, who had either traded for himself, or acted as an Agent, must relinquish the Trade, and leave it where he thought it ought to rest, in the hands of private Merchants.

Mr. Tolfrey said, It is by no means my intention to intrude on the time or patience of the Court, by repeating any of the observations which I have already published; if any of the Proprietors have done me the honor to read that publication, they are already in possession of my opinion on this Question. Some few observations have since that publication, suggested themselves to my mind, which I will endeavour to state as briefly as possible. The first observation I shall suggest, may upon stating it, appear to the Honourable Proprietor more immediately to apply to his conduct, than to the Question itself. I do assure him, it is not introduced with that intention, and he will see how I apply it to the argument. It is the late period of the Gentleman's astonishment! The Bill passed into a Law the 11th of *June*, 1793, and (if not before) no doubt soon after it had passed, he read it with the utmost attention. He must have done so, for he was, almost as soon as it had passed, appointed a Member of a New Committee of By-Laws, constituted for the express purpose of new modelling that Code of Laws, and

adapting them to the New System established by Parliament. He, no doubt, was selected, and deservedly selected, for the great attention he had paid to the progress of the negotiation, of which this act was the result. The Honorable Proprietor delayed the public expression of his astonishment, ten months after the Act had passed; it was not expressed at any General Court till *April 1794*. But what is most remarkable is, not that he discovered this great secret of the Directors right to trade, so late, but that he never found it out at all; for in his printed Speech, he says, expressly that he *heard* it. The isolated nature of this astonishment, is also remarkable, for excepting the Noble Lord whom the worthy Proprietor has called upon as an auxiliary, but whose surprise appeared to be rather at the manner in which the subject was noticed, than at the substance of it; excepting this Noble Lord, and one Honorable Director, he stands alone in his astonishment. The inference I mean to draw from these observations is, that there is no real cause to be astonished, for that nothing unexpected, or unintended, has been done. If there were any solid foundation for astonishment, there are other persons who have more reason to be amazed than the worthy Proprietor: I mean the respectable Gentlemen behind that Bar, who conducted the Negotiation. Supposing for a moment, as one of the worthy Proprietor's arguments supposes, that they were all asleep pending the Negotiation, (they will pardon the supposition—with me, at least, it is only an hypothetical lethargy) would they not, when the Act *had* passed, read it? and can any Director read it, and not suspect at least, that when all British Subjects were allowed to trade by one clause—when the restrictions against all the Members of the Corporation trading but on the joint Stock, (without excepting Directors) were repealed by another, and when they are called upon to swear in what manner they will trade, and in what manner they will not trade, by a third, and are no longer called upon to swear as they had annually done before, that they would only trade according to the Act of the 9th and 10th of *William III*. After all this, I say, is it possible that Mr. Scott should be the only Director, who gave the Act of Parliament its true and obvious interpretation, and thought he had a right (as he tells us he did, though he never exercised, or meant to exercise it) to trade on his separate account, under the sanction of that Act of Parliament. If the Honorable Directors only suspected this, and the right was in direct contradiction to the Negotiation, would they not have anticipated the worthy Proprietor and expressed their surprise, and something more than their surprise, on the occasion, much sooner? They must have accounted to this Court for so singular an event, and have told

told us by what stratagem, or to what end it had been brought about; and who was the author of so daring and dexterous a plot.

The next circumstance I shall observe upon, is the contradiction between the Oaths, which the worthy Proprietor contends was intended to have been taken, according to the spirit of the Negociation, by one and the same person, at one and the same time. By the old Oath, a Director must swear not to trade but according to the Act of King William. By the new Oath, he was to swear not to trade but according to the Act of King George; and the modes of trading by the two Acts are very different. The Legislature were (he contends) to enact the Oaths for these discordant ends, in an Act of Parliament, one Clause of which, repeals that part of the Act of *William*, which the old Oath went to confirm, and by a necessary consequence abrogates the old Oath. This inconsistency must have happened, if the Clause had stood part of the Act.

I find that I have been, in one instance, inaccurate in the answer I have printed to the worthy Proprietor's speech. I have said, *that the Merchants would ask whether, in order to be an India Agent, it is necessary to be an India Director!* No, they would ask no such Question. The Merchants of London are better informed, they know, that the most considerable India Agents, are not Directors. On a reference to an authentic Document, annexed to Mr. WOODFALL'S REPORT of the DEBATES on this SUBJECT, in *June* last, it will be seen that the total of the Private Trade, and Priviledged Goods, from 1785, to 1793, is near Seven Millions, and that the whole quantity consigned to Directors, during that period, does not exceed 90,000*l*.

That the Directors have even this share of the trade, is not owing to the influence of their being Directors, but arises from their intimate connexions with India, and the knowledge which their Constituents have of them. They brought their Agency along with them into the Direction, it was a plant of a natural growth, raised by confidence and character, not forced in the hot-bed of corrupt patronage.

The Honourable Director who seconded the Motion, has denied that this Agency can have the argument of experience in its support, for that in point of fact, there had been no trade, consequently there can have been no Agency. How this assertion is to be reconciled with the document I have just referred to, I am utterly at a loss to conceive. The Honourable Director, has also argued against the exercise of Private Trade

Trade by Directors, that they must always have the advantage of every other Private Trader; and yet he has informed us, that previous to the passing of the Act, whenever the interest of the Private Trader and the Company, came into competition, the former constantly prevailed. This shews at least, that the Private Trader, against even the whole Court of Directors, knew how to defend his own Interest. If it is contended that this was owing to the Directors having a view to their being Private Traders themselves, and were purposely, therefore, such feebleness competitors, it cannot at least, be consistently contended by the same person, that the Directors did not previously know of any intention in the legislature to grant him such a right. I must conclude, however, that when this competition was successful, it was because the claim of the Private Trader, was a fair claim; and in the same manner will the individual always be protected, while his interests, as well as the Company's, however they may be at variance with each other, are under such honourable protection. A Director owes no duty to the Company, which is in opposition to his moral duties, and will never consider the interest of the Company apart from its honour, or his own. I admit that the principle upon which the worthy proprietor has established his Motion, is correct; and this did not, for a moment, escape the penetration of another intelligent Proprietor, when it was first suggested, but he very properly said, let us look to its bearings, and consequences; it will be found that the very Act of Parliament, which we have so recently agreed to recognize, is a deviation from this principle; it does so, by the 95th Clause, which gives a license to the Civil Servants in India (not employed in any judicial or military capacity,) to act as commercial Agents for persons resident in this country, both for the sale of articles from Europe, and the purchase of investments in India, most, if not the whole of the arguments adduced against the Directors' right of Trade, would apply, if they were applicable to either, against this commercial Agency of their Servants in India, which is thus granted in express words by the Act, and it is remarkable that it must mean their Commercial Servants, for the Judicial and Military Servants are excluded.

The modifications with which the deviation from this abstract principle is fenced, and protected by the existing regulations of the East India Company, renders the arguments drawn from the naked principle, as applied to them, in my opinion, erroneous; but putting it in the broadest way, the most favourable manner for the worthy Proprietor's argument as between individual and individual; there are instances, numerous

merous instances I believe in this great commercial city, of that confidence being given by one man to another, without any prejudice resulting from it. There are instances, where Merchants trade at once for themselves as Principals, and for other persons as Agents, in the same article. Such is the confidence placed in men, whom the worthy Proprietor thinks would come into the Direction, not for the sake of the salary.—“Not for the sake of the patronage, and not for the sake even of the respectability of the office, but for the sake of the *superior* advantages of Agency.” strange that he should think any advantage superior to respectability!

If I understand the principle of the Motion, it is this,—that no man ought to be placed in a situation where his individual interest may be materially at variance with the duty he has to perform for others.—Let us apply this principle to other transactions of this Corporation, and see whether they are not instances of deviation from it in practice. Suppose the Question in this Court was, whether we should enlarge our Trade from China, and bring home more Tea? would not the worthy Proprietor, who is materially interested in that Trade, speak and vote upon such a Question? When Questions respecting the Shipping Owners are agitated in this Court, do the Owners of Ships withdraw, and decline to vote, on account of the interest they have in the Question? If there be any Gentlemen now present, who may be essentially benefited by depriving the present Directors of their Agency, which may contribute to enlarge their own commissions, will they think they ought to be excluded from giving an opinion for the Question? No, for they will speak, and they will act, as if they had no such interest; they will not listen to any other suggestions, but those of conviction, after a fair and liberal discussion of the subject; let the same confidence be given to the Directors, which we allow to one another, till they have ceased to deserve it.

Those who oppose a principle true in the abstract, have a difficult task to perform. In this respect, we, in our little sphere, are doing what the most part of Europe now are, on too wide a scale; we, like them, are contending against the injudicious application of an undeniable principle. Dreadful indeed, has it been found in practice! a tribunal, where men have been punished, against whom no crime has been proved, is one of the fatal instances of that full measure of iniquity, which its practical application has led to, this respectable Court will never, in imitation of such a tribunal, pass sentence on their Directors

without a fault. We shall not take off the present heads of our Corporation, by the Guillotine of this By-Law, least the new heads which it is proposed to substitute, should not fit it equally well, and the functions of the body be suspended, but be contented to leave the old heads, upon the Corporation's old shoulders.

Mr. Scott said, Sir, I do not rise to enter into the Question of Agency at present, because I wish to hear abler opinions before I trouble the Court with my own. But I rise, Sir, to make a few remarks on what has dropt from the Mover of the Question, on the present occasion, and on his conduct during the progress of it, since he first brought it before us, on the 19th of *March*, to the present day.

It must be in the recollection of Gentlemen, that on his first introduction of the subject, he brought it forward in such ambiguous terms, and in such an unfortunate and questionable shape, that before he explained what really had happened, he had impressed the minds of many with an idea, that some enormous crime had been committed, by a certain Director behind the bar; that the other Directors had winked at its enormity, and that they had so dexterously managed it together, that the criminal part would have remained concealed, had not the penetration of the worthy Proprietor traced it out. That he meant to give it the air of previous concealment, Sir, must appear clear, from the words which he used, and on which he had laid such a strong emphasis; for, says he "I can prove to the satisfaction of this Court, that it is a notorious fact, not to be denied, &c. &c." Such an impression did he make on the audience, that a Noble Lord started up, and though he had not yet heard the crime, (as I believe) called him to order. I am not quite clear as to his calling him to order, but whether he did or not, I am clear as to the words used by that Noble Lord; his Lordship cautioned him against rashness, and declared that what he had already said, had the appearance of a gross calumny against the whole Court of Directors. That unless he had proof positive of the charges he was to bring forward, he should make no assertion at all.

The worthy Proprietor, endeavoured to explain away the unfortunate mode he had used, of introducing the subject, and at last acquainted the Court, that a certain Director had taken up 800 tons of the Company's Tonnage, to convey *his Merchandise* to India; but he said that could
not

not be a calumny from him, which was a notorious fact; for it had been tried in the Court of Directors, who had divided *ten* and *ten* upon it.

Now, Sir, it so happened, that both these positions, of the goods being on the Director's own account, and of the Question having been tried in Court, were proved to be equally untrue. I wish I could find a foster word. The fact was, that the Director who he alluded to, had neither traded, directly or indirectly, in any respect whatever, on his own account, since he left India, in 1786; and that such a Question as the worthy Proprietor had asserted to have been tried in the Court of Directors, had never been before them. It was also proved in the General Court, that what had been done by that certain Director, was perfectly legal, and the speakers on that occasion declared it to have been meritorious.

The result, then, of this misconceived attack, ended by the Court's going away, apparently prejudiced in favour of that Director's conduct, instead of deeming it criminal.

The second appearance which the worthy Proprietor made in this Question, was on the 10th of *June*, which was the day appointed for it by himself, but other business having occupied the Court for some hours, the worthy Proprietor proposed putting it off, from that day to the 18th. Two Honourable Baronets behind the Bar, and myself, objected to so early a day, because there would be such a thin Court; and I particularly pointed out my having waited in town, with much inconvenience to my other Public Duties, merely to meet the Question on that day, and that I was from necessity obliged to leave London immediately.

The Honourable Baronet, now by me, used similar arguments, as did some other Proprietors. As the worthy Proprietor still insisted on the same day, several Gentlemen then pointed out, that the Parliament was just breaking up, in which there were many Proprietors, and that as it was the season of the year, which the Merchants, and other Proprietors of London, generally used for country excursions, it of course would be the thinnest Court in the whole year, therefore the most unfit for a Question of consequence. That considering the parties principally interested in it, could not be present, there would be a want of candour, and a want of decency, in bringing it on as proposed. However, Sir, the
worthy

worthy Proprietor, in defiance of decency, judging, no doubt, that a thin Court, where there could be none who were acquainted with the subject, would be more convenient to the purposes he had in view, persevered in his resolution. The Court accordingly met, when I was in the North, and the worthy Proprietor produced the Speech which he afterwards published, and which I now hold in my hand.

Elegant as it was in point of language, yet he could not find, in the whole Court of Proprietors and Directors, more than one solitary Member, the now Secunder of the present Motion, that could be brought to signify approval; that Honorable Director, (Mr. Elphinstone) who did approve it, and seconds this Motion, I shall presently reply to. Sir, it was so infamous, so illiberal, and so personal, against a Director, who was from necessity absent, that every Gentleman who spoke that day, the Honourable Secunder of the present Motion excepted, put the Question totally out of the case, and defended the character of the absent Director, who was so attacked. Even the Gentleman, who seconded the Motion on that former day (Mr. Jackson Barwis), also defended it,

The candour of the Court scouted the idea of discussion, refused to enter into the Question of Agency at all, an Adjournment was moved, carried, and the Court broke up.

The next time, Sir, that the worthy Proprietor appears, is, when he pressed his printed Speech on the notice of the public. I believe his expectation must have been fully answered, as to its circulation, that is, I imagine it reached every person to whom he sent it. To all the Directors he sent his Pamphlet, as I understood, and one reached me, Sir, amongst others.

When I read the title page, and saw *R. Twining*, I own I took it for granted, that I should find in it, much moderation, discretion, and every thing but information; for I conceived that the severe exposition he had gone through in your different Courts of Proprietors, as before mentioned, must have taught him an useful lesson.

I read it through, Sir, with much attention, and I felt, as every man behind this Bar, who had the feelings of a Gentleman, must have felt. I found that a certain Director was, by indirect insinuations, accused of perjury,

perjury, a fabrication of Papers, altering an Oath for his own private purposes, and, in short, of every thing that was base and infamous.

It is true, no name was affixed to the most atrocious of the crimes charged, of course the whole Court were so far equally implicated, but no man who read with attention, who took a retrospect of the worthy Proprietor's proceedings, and who reasoned upon them, could for a moment doubt their being aimed at me. Even if they had been laid to my charge by name, still the whole Court must have been implicated, for winking at such infamy. I say, Sir, I felt as every Gentleman in the Court must feel, that the accusations were too infamous to be made by any Gentleman, without his having proof positive of such infamy, and too infamous for any Gentleman to take either private or public notice of, unless under very peculiar circumstances.

Under such peculiar circumstances, unfortunately, I found myself to stand. For however unworthy of notice, the despicable and mean Pamphlet now in my hand, published by that worthy Proprietor, might appear to me, or however mean I must conceive it's writer, yet, being published by a Proprietor of East India Stock, against a Director, it became my duty to lay it before the Court of Directors, who must judge for themselves, of the notice it might merit. I did so, Sir, and I have now to desire, that my Letter to the Court may be read, with the Solicitor's Letter, relative to the Oath, and the Court's Resolutions.

While they are getting the Papers, I will beg leave to reply to the Honorable Director who has seconded the Motion before us, and more especially comment on the opinions which, in my absence, he approved, and which he now has confirmed by his Speech. Sorry am I to find Sir, that the Honourable Gentleman, in the absence of his Brother Director, should have so far forgotten himself, as to go purposely out of his way, to approve the conduct of the writer of this shameful Pamphlet, which no Gentleman within, or without these walls, has signified any approbation of, the Honourable Gentleman himself excepted. He has declared that he thought the worthy Proprietor had brought it forward *fairly and honorably.*—

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Mr.

Mr. *Twining* interrupted Mr. Scott, to say, that the Honourable Director might as well spare the term *worthy*, because if he thought the epithet he had honoured him with, [*mean*] as the writer of his Speech, he certainly was not entitled to be deemed *worthy*.

Mr. *Scott* apologized to the Court for any unseemly warmth, or improper expression, his feelings might have betrayed him into. Having said this, Mr. Scott resumed his argument, and said,—Sir, the worthy Proprietor's Pamphlet, gave me no uneasiness, because I took it for granted, that no man who knew me, could believe a single word of it. But, Sir, I own I felt hurt, and I now feel hurt, at that Honourable Gentleman, instead of supporting the Character of an absent Brother Director, (which he knew to be most unmeritedly attacked, and wantonly abused,) taking so very different a part. Was this generous, or was it like himself?

Clear I am, he would not have received such a conduct from me. Had that Hon. Director been in the North, Sir, and I in my place here, how should I have acted? I am sure the Court will do me the justice to believe, that instead of volunteering in such a cause against him, I would have defended his fame. The honour of a Gentleman is sacred, and if I had an idea of that Gentleman's honour being correct, which I am confident he has that mine is, I would have addressed the Court on the iniquity of such proceedings; I would have exclaimed, "that calumny against private character, had been intruded, and forced upon the Court, and substituted in room of the original Question. That this Proprietor must have mistaken the respectable English Court in which he spoke, for the National Assembly. That he must have supposed himself in the Convention of France. That defamation had been marked out as the *Order of the Day*, and the shafts of malevolence set loose upon virtue and honour." Sir, I know not how I may stand in the Opinion of the world at large, but pride, and the practice of virtue, lead me to believe, that I stand well at least, in the opinion of the good; and, Sir, while I stand well in the opinion of the good, I shall not be solicitous, as that Honourable Gentleman and his Friends appear to be, to stand well in the opinion of the bad. For what do these Gentlemen say, Sir? They ask, what might people without doors think, what might the publick think, if we acted on Agency; or to make the Case stronger, if you, Mr. Chairman, was so to act, would not suspicion
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naturally attach? What is this, Sir, but in other words, saying, that they fear *bad* motives being ascribed to *good* actions. How far may they carry this? What a shocking Theory! I am sure, Sir, that you, and the other Gentlemen must see, as well as I do, what a dangerous doctrine this would be, if carried to any great extent. All I shall say on this at present, is, that I hope, for the sake of those Gentlemen's characters, and for the sake of humanity, that the Honourable Director, and those by him, never have practised such a Theory, and that they never will; for otherwise, upon the same principle, they never could have done one good action in their lives, lest bad motives should be ascribed to it, and never can do one, to the day of their death.

As the Honourable Director, and his worthy friend, who moved the Question to day, have also apparently put much stress upon the Directors having divided 10 and 10, upon a Motion proposed for referring the Question of Agency to the General Court, I shall beg leave to explain that matter.

There are, in the Court of Directors, as you well know, Sir, several parties whose motives cannot be well understood. One of these declare themselves against carrying any thing into the General Court; one of them is for carrying every thing into it; one of them do not trouble themselves what is carried there, or what not; and some there are, who think as I do, that every Question that is of real consequence to the Company, and on which mens minds seem much divided, should be referred to the General Court.

On the division referred to, of 10 and 10, several of my best friends, now behind this Bar, have declared, that they balloted *for* the Question's being brought before the General Court, and some declared that they had balloted against it. The fact is, that at that period, it could be of no consequence how they balloted, as to the Question of Agency itself, because it was evident that it must be brought before the General Court by some Proprietor, but perhaps with more propriety than by the Court of Directors. The Question of course, "Whether it should be carried by the Court of Directors to the Court of Proprietors, or not," was by many looked upon as a matter of little or no consequence, and from the above, it must appear impossible for any man to say, who balloted *for*, or who *against*, and presumption in such case might be rash! I am sure if any Gentleman in this Court, would take the trouble to

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trace the line of conduct, which I have been in the practice of following, the natural inference must be, "that I could never shun public discussion; on the contrary, that I would ever court it:" That whenever I saw a serious difference in opinion, on Questions of magnitude to the Company, I used my best endeavours to bring them before the General Court. An instance of this, Sir, must appear on the very last Question which agitated the Court of Directors, when, on finding that we could not bring the Question before the General Court, from a sense of that duty which I owed to my Constituents, I entered my Dissent. Could there be a more irksome task, Sir, or a more severe trial to my feelings, than to dissent in direct opposition to the majority of the Court, several of whom I have so long been, and continue to be, in intimate habits with; or could there be a more striking proof of my desire for public discussion?

But, Sir, I acted in this, as I ever do, conscientiously. There is but one direct line of conduct, in which a man of honour can move. In it I will continue firm. No man, or any set of men, be they however powerful, shall ever carry me from what I consider to be strictly my duty.

While I feel myself equal to discharge the duty which I owe to my Constituents, and they are satisfied with my conduct, I shall certainly continue a Director; but the moment I feel myself unequal to the discharge of that duty, with credit to myself, that moment I shall quit the Direction.

In regard to the Oath, which the Honourable Director must now admit to be in the same exact state as it left this Court, and, of course, that it has not been altered, as his worthy friend, the Mover of this Question asserted, and whose conduct he so much approves, I must acquaint this Court with a circumstance which strikes me as exceedingly singular.

The Honourable Director declares, that he did not understand the meaning of the Oath, to be as it now appears to be. Now, Sir, it will surprise the Court, when I acquaint them, that this Honourable Director, was the *only* Director in the Court, when the Act was passing, who did alter it. He amended it, corrected it, brought in a Clause, got into a sort of warm altercation about it, with a respectable Proprietor,

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now in Court (Mr. Henchman,) the reason of which altercation, I did not then understand; but after having done so, the alterations made by him, were approved, as also others which were made by that respectable Proprietor; That respectable Proprietor was afterwards deputed by the Court, with Mr. Solicitor Smith, to see the Oath framed according to these amendments, and it was framed accordingly, and afterwards approved of by the Court. My memory I am clear, is in this statement correct, but if it were otherwise, there are many Gentlemen here, who were then present, and who would now correct me. Now, Sir, it certainly does strike me as a very singular circumstance that the only Director who had so travelled in framing the Oath, should have been the only one who, after having so long taken it, declares himself not to have understood it.

I beg now, that the Papers may be read.

The letters of Mr. Scott to the Court of Directors and of Mr. Smith, (the Company's Solicitor) to the Board,* dated the 19th and 20th of November, having been read,

Mr. Elphinstone observed, that the Court would naturally feel, after what the Honourable Director had said, that it became him to rise and take some notice of what had been addressed to him personally. He was ready to make every allowance for all that had fallen from the Honourable Gentleman, under the impression of strong feeling, and a sense of wounded honour; but he begged leave to assure him, that had he conceived what had passed at a former Court upon the subject, to be an attack upon his character, he would have been the first to repel it. He thought as highly of the Honourable Director, in point of integrity, character, and honour, as any man living could possibly think. So thorough a confidence did he repose in his rectitude, and manliness of conduct, that there was not a man in the Direction, with whom he could more safely vote on most occasions. Indeed, that single Question relative to a Director trading to and from India, excepted, there was no Gentleman behind the Bar, with whom he had voted more frequently, or more uniformly; and he vowed to God, that had he considered the Honourable Proprietor's mode of bringing forward the Question on the subject of Trade and Agency, an attack upon him personally, he would have

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* Vide Appendix to Report of the Debates of June 18.

risen to defend him. He understood the Honourable Proprietor's speech in a very different light. He thought it to be, what he had already described it to be, viz. a fair and honourable mode of bringing forward an important subject, a subject of great consequence to the Company, and although acting in Agency, might be thought by some to be honourable and correct; he must repeat that it did not entirely agree with his ideas in that respect, as he could not discover how it was possible to reconcile it to common sense, that a man could easily act honourably, while he was engaged in the service of two masters, acting upon different and opposite interests.

Mr. Scott rose again and said, Mr. Chairman, I rise to apologize to the Court, for some words which I am just told escaped from me, in the warmth of Debate. I recollect having used the word *mean*, a very indecorous epithet indeed, to be used in such an assembly as this.

I have no hesitation in begging pardon of the Court, for that, or any other improper expressions which may have escaped me. Gentlemen, I claim your indulgence, and I am confident I shall have it, if you but for a moment place yourselves in my situation. Accused by the writer of the Pamphlet, with perjury, fabrication of papers, altering an Oath for my own private purposes, My God! Sir! who could be otherwise than agitated, under such infamous accusations. Passion, under such circumstances, will run away with us at times; I therefore again beg pardon for words occasioned by such unusual warmth. It may be proper also, Sir, that I do justice to the worthy Proprietor, on this occasion. I allow, Sir, that he has not, on this day, in my presence, used any sort of that improper personality, to warrant such epithets, as he did in my absence. In justice to the worthy Proprietor, I must also add, that I verily believe, he, judging, as mankind generally judge of others, by themselves, in attempting to describe my character in the Pamphlet, gave the exact description of his own. I hope this will be deemed fair. I declare, upon my honour, I meant to give no unmerited offence to any man, but a little of the *Honi Soit qui mal y pense*, is the least the worthy Proprietor is intitled to, from me.

As to the Honourable Director, Mr. Elphinstone, who replied to me, I have a very just sense of the compliments he has paid me, but there still are certain insinuations about honour, from that Quarter, which I do

do not yet think quite so satisfactory. Sir, Gentlemen cannot differ, according to my idea, in regard to honour.

Sir, I must remark, and I do it feelingly, that pure and immaculate as that Gentleman and his friends may suppose their conduct to stand in the great scale of Character, I have no hesitation in putting conscious rectitude in the other scale, and not the least apprehension of it's kicking the beam. Conscious rectitude, Sir, stands on such a stable foundation, that it's most prominent feature must ever be, candour and boldness, and this, I hope, will plead my apology to the Court, for being so uncommonly bold on this day.

Gentlemen, I speak to the feelings of you all, when I say, that the man who does not feel bold, when Honour comes to be the subject of dispute, cannot have the feelings of a Gentleman. I shall intrude on the Court no longer at present, and am hurt at having encroached upon it so long.

Sir *Francis Baring* addressed the Chair in the following terms. The reason for my pressing for the papers to be read, which had passed subsequent to the last General Court, was, that they contained a complete refutation of the facts asserted by Mr. Twining, in the speech which he had published. Those papers had been communicated to Mr. Twining, who preferred a repetition of what he stated to be facts, which he must know would be refuted, to a mode of proceeding, which, by conveying to the Court correct information on many very important points, would have enabled them to have formed a sound and impartial judgement. If Mr. Twining will point out a single fact that shall impeach the conduct of any individual in the Direction, I am ready to answer him, and, I trust, to the satisfaction of the Court. But until he shall do so, I must say that what he stated to be facts, are unfounded, and that his publication and conduct, are a calumny on the Court of Directors. He has been pleased to express a hope that the Directors will not contend for *restraining* this advantage, and that self-interest is not the principle of *all* Directors. Sir, I am not contending for advantage, and self interest never was a distinguishing feature in my character. The advantage which I have derived from Agency, is contemptible, and too trifling to mention: the same practice prevails now, which has existed for a century past; Agency was permitted under the former Oath, and Agency has been practised since; it is all for which we contend, and I call on Mr. Twining to prove a single instance

stance of a Director trading for his own account, and I call on him with more confidence, because I know there is not a single instance to be produced. But, Gentlemen I contend for that which is far superior to advantage, a self interest, which is dearer to me than life, and which I will never abandon; I mean in defence of my own character. It is singular, however, that Mr. Scott should be attacked in so personal a manner, as 18 or 20 Directors, whose names have appeared in print, must in some degree be in the same predicament.

[Sir Francis held the Report of the Debate of June 18, in his hand, when he said this—Mr. *Henchman*, therefore, called to him to desire that he would read the Names in the List, which Sir Francis did, from Page 10, of the Appendix of our Reports, lately published.]

Mr. *Elphinstone* said, it was true he had received Bills as a Banker, from India, but he neither considered that as an instance of Private Trade or Agency.

Sir *Francis Baring* said, it is the principle, and not the magnitude of Mr. Scott's transactions, which must constitute the crime, if there is any; a man is a thief for stealing a guinea, as much as if he stole a thousand. Some Gentlemen are pleased to say, it is *only* for Bills of Exchange—Mr. Scott may say, his transactions were *only* for goods, which I state, however, merely for the sake of argument. The fair question undoubtedly is, to whom do those Bills of Exchange belong? to another, or to yourself?—If to another, the person receiving those Bills of Exchange, is an *Agent* in every sense of the word.—If to himself, the transaction requires explanation; because Directors were not permitted to engage in transactions for their own account, unless with the permission of the Court of Directors; but they were at all times permitted to act as Agents. This distinction between money, and goods, is as extraordinary a part, as any, and manifests a complete ignorance of the subject. Why a Banker, who reaps an advantage by money remaining in his hands, and from a connexion, which, from the nature of the business, is likely to continue through life, shall not be under any bias or influence, or have any advantage over other Bankers, who are not Directors, I cannot conceive. The only difference is, that the Banker's profit arises from interest, and the Merchant's from commission; but the Merchant's connexion is of a more temporary nature,

nature, and frequently terminates with a single operation. One Gentleman has been pleased to express an alarm at the dreadful consequences which would result from the Chairman being an Agent—the fact is, and which appears from the list, that almost every Chairman has been an Agent; but strange to tell, the business of every such person, as an Agent, has declined since the period, when they have respectively filled the Chair.* What is the comparative extent of this enormous evil, or crime, which has always existed, and which has now, for the first time, created so much alarm?

The total amount of goods in Private Trade sold in the last 8 or 9 years, amounts to about seven millions of pounds, whilst the goods consigned to Directors, amount to no more than about ninety thousand pounds. It is true, the proportion of Bills of Exchange is larger, £.530,900, having been remitted to Directors, whilst the total amount of what has been drawn upon the Company is £.10,807,000, but this has been deemed an innocent transaction.

After all, what has Mr. Scott done? That Gentleman, with many others, continues to do, what they always have done, and yet they are charged with deep designs for the basest purposes. No Director has traded for his own account; and if he has done so, the Company cannot suffer. Under the present Constitution, the Commercial, has been always considered as subordinate to the Political Interest. India must be benefited by every addition to its commerce, as it must contribute towards the general prosperity of the Empire. It was upon this principle, as well as for the encouraging the exportation of British Manufactures and Produce, that Government insisted upon the Liberty of Trade granted to Individuals, and it remains to be seen what their sentiments will be, if a By-Law should pass, which is a direct infringement of the letter and spirit of the late Act of Parliament. A person who can suppose that a Director can obtain preferences, privileges, or superior information over any other Merchant is totally ignorant of the practice of the East India House, and of the publicity with which every part of the Company's Commercial concerns are transacted. Every Broker in his respective line, is better informed than any Director; the communication is

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* Nathaniel Smith is an exception, and which is believed to be an accident.—Say accidental, that he ever was an Agent.

made to have sooner, because his information is constant, whilst the enquiry of a Director is occasional, and it is some time before he can ascertain the officer from whom he can obtain the most speedy and correct information for which he seeks. Besides, the Merchants have no common cause, and the appearance of their names being Directors, which must appear in every transaction, is more likely to excite attention and jealousy, than a disposition on the part of the Court to connive at practices which may be injurious to the Company. This Court, however, ought to understand the origin of the Question, and the real state of the case, which the Honourable Director, who seconded the Motion, has brought to issue; it is neither more nor less than a contest between the Commercial and Shipping interests; it is whether you will have Captains of Ships as Directors, in exclusion to Merchants. Mr. Scott has always been distinguished for an opposition to the Shipping Interest, that interest is to the East India Company, what the Jacobin Society was to the French Convention, and finding that difficulties would arise by selecting an individual, it is intended to punish him, under a general principle, which involves at the same time friends, as well as foes. It is in vain to pretend that the Agency exercised by the Directors, is either hostile to the Company, or attended with undue advantages over the publick at large, after the facts which have been adduced in support of that Opinion, and the want of a single fact to prove the contrary. But it is admitted, that for what relates to Exports (Mr. Scott, is a single instance, in that respect) that if carried to a certain extent, it might interfere with the Captains and Officers of the Company's ships; but when the very superior advantages which the Captains and Officers enjoy over a Director, and over the publick at large, are considered it will be found impossible to enter into a competition with them, and consequently that this objection must also fall to the ground. Those Officers are present in both markets, acting for themselves, and capable of acquiring better information than any other person—they pay *no commission*—and they pay *no freight*. Every other person (including Directors) can only be present in one market—they must pay commission—and they must pay freight.

A very few facts will place this comparison in a distinct and correct point of view. In the seasons of 1792, and 1793, the Captains and Officers were indulged with 10,400 Tons, *free of Freight*, whilst the publick (including Mr. Scott) occupied no more than 1100 Tons, for

part of which, they paid Freight at the rate of 10l. per Ton; and for the remainder, 7l. 10s. And supposing the Captains and Officers had paid Freight in the same proportion, it would have amounted to 91,400l. which, it is humbly presumed, will protect them against any preference or advantage which a Director can derive from his official situation. For Mr. Scott's transaction having been subject to Freight, he must have paid 6,100l. for the benefit of the Company in one season. If that Gentleman had acted with duplicity, or attempted to conceal his transactions, he might have availed himself of the unbounded indulgence to the Captains and Officers, to whom sufficient Tonnage would have been granted *Freight free*, and the parties might have divided the spoil, to the prejudice of the Company. But although the line of conduct he did pursue, cannot be made the subject of accusation, it is by no means impossible to have furnished cause for resentment. Under these circumstances, who has cause to complain? Mr. Scott, or the Captains? It was the intention of the Legislature, and also of the Company, to place every person *trading to and from India*, upon a footing of equality; the usual privilege allowed to the Company's Officers, excepted. But it appears that the Company's Officers have obtained a very large indulgence beyond their privilege, *Freight free*, whilst the trade of Mr. Scott, which is not injurious to the Commerce of the Company, and beneficial to their superior interests, is taxed with a heavy Freight, instead of being placed upon an equality with others.

In this point of view, the complaint is, that the whole of 3000 Tons reserved under the act of Private Trade, and for which the Company pay an enormous Freight, has not been converted into a job, for the exclusive benefit of the Captains and Officers. This complaint, however, is now removed, for the whole of the 3000 Tons which the Company are compelled to send this season to India, for Private Trade, remains unoccupied, and will probably be granted as usual, to the Captains and Officers, *Freight free*.

This Court can make By-laws, no doubt, relative to their own concerns, but when a By-law is attempted to be introduced, which militates against the letter and spirit of the Act of Parliament, it merits most serious consideration, and particularly for those who appear most interested in support of the Motion, as it is probable that Government will be more disposed to extend, than to curtail the privileges of individuals; and

and there is no reason whatever, that can be urged to justify a monopoly of Shipping, unless it is attached to a monopoly of Trade.

Every gentleman who will consider the Question with attention, must feel that its adoption will convey a censure, and slur, upon the characters of those Directors who have acted as Agents; it is for this purpose alone, that I have used my best endeavours to explain the subject at length; but if I am not so fortunate as to convince the Proprietors, I shall readily acquiesce under their determination, and a full confidence that my past conduct will bear the most scrupulous enquiry.

Mr. Twining rose, and in order to put an end to all further discussion of a personal nature, and to clear the Question handsomely of a matter, which seemed more likely to clog the Debate, than elucidate the subject, declared he was either ready to propose or to second a Motion to confirm the Resolutions of the Court of Directors of the 20th of November. He declared he was perfectly satisfied with respect to Mr. Scott's conduct, and did not any longer entertain an Idea, that he had interfered at all respecting the alteration of the Oath; he thought he had cleared himself completely from all ground of imputation as to that point. He was not, however, equally satisfied as to the doubts he had entertained, in regard to the other part of the subject, viz. his belief that the alteration of the Oath was made without the sanction and concurrence of the Court of Proprietors, without the consciousness of the Court of Directors, and in short, without the observance either of the one or the other,

Mr. Twining again went over the ground of his former argument with respect to the Clause of the Bill marked M. M. the decision of the General Court respecting it, and the violent departure from the terms and meaning of that Clause, exemplified in the words of the new Oath, as it stood in the Act of Parliament.

Mr. Henchman rose and said, Mr. Chairman, I rise, Sir, particularly to state what I know respecting this alteration in the Oath, about which so much has been said, and in which subject my name has been repeatedly mentioned. The generality of Gentlemen in this Court, will recollect that, pending the Charter, I had the honor to propose an increase of the Directors salary, and at the same time, I proposed some Restrictions upon the Directors, which had been a long time among the
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By-Laws of the Company, but which, in future, should make part of the Oath, every Director was to take upon his election. These propositions received unanimous approbation upon the 12th of May, 1793. On the 16th a Clause, marked *M. M.* was introduced into the Bill, declaring that the following Oath should be taken, *over and besides* the Oaths usually taken by Directors upon their election. Here originates the Honourable Mover's mistake. He concludes this to be a promise and agreement between the Company and Government; whereas, it is the error of the person who drew this part of the Bill; for it never was meant by the Proprietors, that there should be any Oath *above and besides* the usual Oath, their Resolution expressly concluded with these words, *that the Oath usually taken by every Director, immediately after his Election, he made to embrace these several Restrictions.* However, Sir, on examining the form of the Oath, under this clause, I found it was incorrect, which I pointed out to the Solicitor, and upon the error being admitted, it was that day generally agreed that it should be deferred until the next General Court, and it was repeated, and clearly then understood, that every matter to which Directors were to be sworn, should appear in *one Oath*, that the Solicitor should prepare it, and that I should confer with him, to see that what addition I had offered, was made correctly.* In consequence I called on the Solicitor, and he shewed me the form of the General Oath, as it now stands in the Act; I saw that every particular was correct, according to the Resolution I had offered, and which passed this Court on the 12th of May; and I am ready also to acknowledge, that I saw the conclusion of this Oath, which is the cause of the present explanation. The Solicitor says, he consulted me respecting the alteration; if he did, I most certainly agreed with him in the propriety of it, and I most heartily join in every thing he has said on this subject. The old Oath declared Directors *should not trade contrary to the Act of the 9th and 10th of William III.* referring by that, to the System of the time when it was made. That System, by the 33d of George III. was done away, the Solicitor saw an alteration necessary to make the Oath common sense, and he therefore makes it conclude with these words, *contrary to the Act of the 33d George III.* The Oath, as it stood before, gave the Directors all the liberty that was allowed by the System of that time, the Oath, as now altered, gives them all the liberty of the System of the present time. I thought it right then, I think it so still, but the Solicitor, as a public officer, did more, he laid it before the Company's Counsel, before the Committee of Correspondence, before the Court of

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* *Vide*, The Reporter's Continuation of the Series of Debates at the India House, Page 118.

Directors, and then it came before this Court, on the 22d of *May*, and was read, with several other Clauses respecting Chaplains, Schoolmasters, &c. It was also in the hands of the Board of Controul, and their Officers, and lastly it passed the Houses of Lords and Commons. Surely Sir, the Honorable Mover of the present Question, will not now say, this was an Act done *fly*, or without the knowledge of any one, either behind, or before this Bar; and, Sir, with respect to Mr. Scott, I am persuaded every one is now completely satisfied he had nothing whatever to do with the formation of this Oath. For myself, Sir, I am ready to acknowledge, that, in considering the concluding words of the Oath, my mind was governed by the intent of the words, as I understood them, and that was, that as Directors were bound, in 1698, not to trade contrary to that System, so in 1793, they should be bound not to trade contrary to the present System. It was not in my consideration, whether this alteration gave the Directors more or less liberty than they had before; and, Sir, I will go still further, I will acknowledge, that had the matter which is now agitating, been then brought forward, with all the Arguments I have heard and read, I should have agreed with the Hon. Mover in one part of his proposition. I should have said, Directors ought not to trade as Principals. On the other part, I am not so decided and for this reason; trading as Principals is a new case, and therefore if we see probable inconveniencies, we should provide against them; but in respect to Agency, we have a great deal of experience to guide us, and that experience tells us, that there have been Private Traders for many years, and that Directors have always acted as Agents, but for these eight years past, when the amount of Private Trade has been 800,000*l. per ann.* the Directors have not had Consignments exceeding 10,000*l. per ann.* This being the case, and supposing the future Private Trade to extend to four millions *per annum*, the Directors may have consignments to the value of 50,000*l.* We all know what this Commission would be, and therefore can make a due estimate of the value; and there can be no fair reason given, why the share of Agency will be greater in the next eighteen years, than in the last eight years, for the servants of the Company in India, must have been as desirous of cultivating the favour of Directors in one time, as in the other. I look, Sir, upon the Export Trade from this country, to be out of the Question, for that is, by the Act, confined to *British Merchants, residing in Europe*, but I should be glad to have the Opinion of the Company's Counsel to that point.

Mr. *Rous* (the Company's Counsel) came forward to satisfy the Hqr. Proprietor, and after looking at the words of the Clause, said, he saw nothing in the terms of it, which tended to shew that the policy of the

Act extended so far, as the Hon. Proprietor seemed to conceive; or that the wisdom of the Legislature had it in contemplation to impose any restrictions, so as to prevent any of his Majesty's Subjects, *resident* in Great Britain, or in any other part of his Majesty's European Dominions, who were allowed to export Goods, &c. of British Produce or Manufacture, from forming such a Compact with their Correspondents in India, that the profit of the Adventure might vest in either party, the Shippers or the Consignees. Mr. Rous was proceeding, when he was interrupted by

Mr. *Prinsep*, who suggested his perusal of the 87th Clause likewise, before he delivered a formal Opinion; but Mr. Henschman, and several other Proprietors, desiring that the Clause in Question (the 81st) might be read, the same was read to the Court, as follows:
 " *Provided also, and be it further enacted, That during the continuance of the said Exclusive Trade in the said Company, subject as aforesaid, it shall and may be lawful for any of his Majesty's Subjects, resident in Great Britain, or in any other part of his Majesty's European Dominions, to export, on their own proper risque and account, in the Ships of the said Company, or in Ships freighted by them from the Port of London, to any of the ports and places usually visited by the ships of the said Company, on the several Coasts of Malabar and Coromandel, or in the Bay of Bengal, in the East Indies, or the Island of Sumatra, any Goods, Wares, and Merchandize, of the growth, produce, or manufacture of the said Dominions, save and except as herein after otherwise specially provided. And that in like manner it shall and may be lawful to and for any of his Majesty's Subjects, in the Civil Service of the said Company in India, or being by leave or licence of the said Company, or under their protection, as Merchants resident in India respectively, to consign and put on board the Ships of the said Company, or in Ships freighted by them, bound to Great Britain, any Goods, Wares, or Merchandize, save and except also, as is by this Act otherwise specially provided, in order to the same being imported, on the risk and account of the Owners thereof, at the Port of London, under the Regulations herein after specified and contained.*"

Mr.

* The Counsel, an Hon. Gentleman has suggested to the Reporter, appears to have been here taken somewhat by surprize. But whatever doubt the terms of the above enacting

Mr. Rous said, that he saw no reason to alter the Opinion he had delivered ; there was no expression in the Clause which imported that the Legislature meant to interpose a Restriction to prevent Merchants in India from forming a Compact with their Agents in England, who ship goods, that the profit thereof should belong to the Merchants in India, to whom the goods were consigned. The words enacting " That it may be lawful for any of his Majesty's Subjects resident in Great Britain, or any part of his Majesty's European Dominions, to export, *on their own proper risque and account*, in the Ships of the said Company," &c. distinguished them from the Company merely as Private Traders, under the Clause allowing the Export, but did not appear to him to convey any other meaning, than that the Legislature, in authorising the Export, looked to the persons, who, by their local

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ting clause might have suggested to the minds of himself and Mr. Henchman, the explanatory clause alluded to by Mr. Prinsep, had it been also read, would have removed all shadow of doubt, and confirmed the opinion which Mr. Rous seemed to deliver with some degree of hesitation, and to argue upon from inference only. For the latter avows the principle in its fullest extent. The importance of fixing this point beyond all further controversy, will excuse our inserting the Clause itself: " And inasmuch as the enacting to private Merchants and Manufacturers, the certain and ample means of exporting their Merchandize to the East Indies, and *importing the returns for the same and other Goods, Wares, and Merchandize*, allowed by this Act at reasonable rates of freight, may essentially conduce to the advancement of the Trade and Navigation of these Kingdoms; be it further enacted, that the said Company shall in the proper season of every year, provide and appropriate Three Thousand Tons at the least; for the specified purposes of carrying to the East Indies such Goods, Wares, and Merchandize, as may be lawfully exported thither by individuals, and for bringing back from thence, *as well the returns of the same, as likewise the goods of other persons entitled to import the same into this Kingdom*, by virtue of this Act; and if the said quantity of Tonnage shall be found insufficient, or shall be found to be more than sufficient for the carriage of the said Private Trade, *Export or Import*, the said Company shall, from time to time, find and provide such additional quantity of Tonnage to be provided for the Carriage of the said Private Trade, as the Board of Commissioners for the affairs of India shall, upon any representation made to them from time to time order and direct. " This interpretation of Mr. Rous, corresponds with that stated by Mr. Russel, in his Abridgment of this Act (see page 9 limitations) and with that of all the law Officers officially consulted in framing it. In short, it must be evident, that any restriction of this privilege of *all persons exporting and importing Goods to and from India*, would have been a manifest breach of faith towards the Manufacturers and free Traders of both Countries, and a direct infraction of the agreement with Government.

To admit that principle, as the basis of the Treaty for an exclusive Trade, under certain limitations, confining their privilege to the capacity of the Company's resources to carry it on but no further; and opening all beyond it to the enterprize, vigilance, and activity of the unprivileged Subjects of Great Britain and India.

residence, could immediately comply with the conditions required, but to have expressed no intention of restraining the Private Contracts of the parties.

Mr. Henchman then said, I do not mean, Mr. Chairman, to trouble the learned Counsel further, I can only say, that I do not yet clearly understand the words of the Act. If the learned Gentleman's explanation be correct, the words are, *that it may be lawful for any of his Majesty's Subjects, RESIDENT IN GREAT BRITAIN, or any other part of his Majesty's EUROPEAN Dominions, to export ON THEIR OWN PROPER RISQUE AND ACCOUNT.* I thought it necessary to mention this point, because it may make a considerable difference in respect to the amount of Agency. However, at any rate, the object altogether has been very trifling, and does not threaten to become dangerous to the Company's interests. Can any gentleman bring forward a single instance, in which the Company has received any detriment whatever; if they can, I beg they will, otherwise I trust this Court will not come to the Resolution proposed, merely upon imaginary evils, merely upon speculative opinions. Past experience, I trust, will have its weight, as well as the restrictions and regulations under which this Trade is managed; which regulations are all required to pass the Board of Controul. And besides this, Gentlemen will recollect that some confidence, and I hope not a little, is due to the Directors; and last of all, that whenever a Director trades to the injury of the Company, this Court has the power of removing him in a few days; or if not inclined to so much severity, they may never elect him a second time. These circumstances, together with the resolution that Directors take a solemn Oath to be true and faithful to the Company, and to give their best advice, counsel, and assistance, by some Gentlemen may be thought security sufficient, but I really avow for myself, if there was no experience to guide me, or if any reasons satisfactory to my mind, shall be offered on the subject, before this Debate is closed, I most assuredly will agree in this part of the Motion also; but I think the two parts of the Question are very distinct, and ought to be separated. I think it is unreasonable to expect Gentlemen to vote for both, or for neither. I therefore submit to the Hon. Mover of the Question, whether, in candor and fairness, he should not, in the first place, take the opinions of the Proprietors, whether Directors shall trade as Principals; and in the next place, whether they shall trade as Agents? I leave it to the Hon. Gentleman's consideration, only adding, that if

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it should appear to be the desire of the Court, I shall be ready to propose such an Amendment.

Mr. *Lusington* said, Mr. Chairman, I cannot agree with my Hon. Friend (Mr. Henchman) who has just set down, that it will be proper to divide the Question, for I am decidedly of opinion that for a Director to trade as an Agent to and from India, is subject to all the objections which apply against trading as Principal. An Agent, Sir, by accepting against a consignment from India, or by lending his own credit to furnish Exports from England, becomes involved in the concerns of his Principal, and thereby contracts a considerable interest in the business, which may often clash with his publick duty as a Director. As a Director, either in Committees, or in full Court, he decides upon the description and quantity of articles to be exported. If he trades either as Principal or Agent, he has to form a similar decision upon his own private concerns. It is against both the honour and comfort of every man, to be placed in such a situation. A Case occurs to me, which will elucidate my idea on this subject. The Court of Directors receive from their mercantile department in Bengal, an Indent for 2000 Tons of Copper. A Director, trading on his own account, or as an Agent, in advance for his principal, is advised, by the same opportunity, that his connection in Bengal has unfolded a large portion of Copper, or the ships on their voyage out, have a large adventure in the same article. In this case, the interest of such trading Director, may induce him to devise and to influence his Brother Directors against a compliance with the Indent: for suppose that a Trading Director has it in contemplation to send to India 500 Tons of Copper, his interest in the speculation, will certainly be promoted by his official exertions to lessen the quantity to be sent out on the Company's account. Cases similar to this, will be perpetually occurring, and a junto of trading Directors, may render the whole commercial system of the East India Company, subservient to their own interested pursuits. This unequal contest between publick duty, and private interest, cannot be tolerated. An Hon. Gentleman has expressed some surprize that the Hon. Mover of the Question has not given any answer to several observations in his Publication: Sir, I can say nothing on that head, being a stranger to the contents of the Pamphlet. I sent to buy it, but so high does the Hon. Gentleman stand as an Author, that I could not procure one, the whole edition being sold off by Five o'Clock in the afternoon.

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As much has been said, Sir, respecting the alteration in the matter and form of the Oath, now taken by the Directors, I shall beg to say a few words on the subject. My Honourable Friend (Mr. Henchman) was solicitous, and properly so, to impose some new restrictions on the Directors. This idea was approved, and it was settled that it would be better to incorporate such new Restrictions in the old Oath, than to frame specific ones. In framing this new and general Oath, I am confident it was never intended by him, or understood by others, that any existing Restriction should be discontinued. But through misapprehension, or inadvertence, this new Oath has done away the Restriction against Private Trade to India, by a Director, which has existed for a century past. It will be sufficient to refer to the proceedings of the Directors, to prove that they, as well as others, were ignorant of this important change in the purport of the Oath; for when an Honourable Director applied, in the name of his house of business, for a large quantity of Tonnage, the Court received the application with surprise, and acted upon it with hesitation; and when, by reference to their Law Officers, it appeared that the tenure of the new Oath warranted it, they complied, with evident marks of disapprobation; and an early opportunity was taken to propose that the Proprietors, in General Court, should be consulted. A Division was the consequence, and there appeared *ten* Directors for, and *ten* against the Reference. The Treasurer, as usual, was resorted to, for the purpose of determining the Question, by drawing Lots. The result was against an appeal to the Proprietors. In all Questions which respect the personal privileges of Directors, a reference to the constituent Body should be made. In the present case, such Reference was peculiarly urgent, for the privilege claimed by the Hon. Director; and debated in Court, was such as eventually might be injurious to the Company; and to me, it appears that it was peculiarly incumbent on that Hon. Director who first claimed the Privilege, to have promoted, nay, intreated his Brother Directors, to concur in the Appeal to the General Court. The Question, though personal in respect to all the Directors, was in this case almost exclusively so, in regard to himself. Though protected by the law, he should have hesitated, when a Question was raised by such respectable parties, as to the propriety of the act intended. Honourable in his principles, and generally correct in his judgement, I am persuaded he would have been active and urgent for an Appeal to the General Court, if, unfortunately, some circumstance or other, had not for a moment shaded his understanding. His character is too high to suffer from any momentary

mentary and unauthorised imputations of a more serious nature, if such have existed. He always stood acquitted in these respects, in my mind, and I have only to lament that he did not urge an Appeal to the General Court, when, in my judgement, both upon the general principle, and in the particular case, he should have done it.

In considering the Question before the Court, I beg to observe, Sir, that it should be argued and judged upon general principles, and not with a view to particular characters. We should not grant to partial confidence, that which we ought to reject upon established general principles. We should not abandon a system of wise precaution, from a respect to a few Hon. Characters, because a precedent may thereby be established, which, in its future operation, may be injurious. It is at all times wise to guard against the deceptions of human nature.

An Hon. Baronet behind the Bar, has argued the Question upon two grounds. He states, that the support of it originates principally in a competition between the Directors, and the Captains and Officers of the Company's Ships; and in proof of the advantage possessed by the former, he has told us that their Adventures are taken out free of the charge of Freight, and with the benefit of their personal direction. I am ready, Sir, to admit that this is a fair statement of their situation, but the Hon. Baronet, in point of candour, should have informed us that the benefits resulting to the Captains and Officers, from their privilege, constitutes the principal part of their pay, or compensation for their services. If then, there exists a competition, it is between the Directors and the East India Company. For if the Captains and Officers are paid by their privilege, the Company must re-place the deficiencies in the profits of it, arising from such competition. The situation of the Company's Marine Officers, is not very enviable at this time. Their merits and abilities, however, are acknowledged by all.

Many Gentlemen, Sir, have insisted strongly that the Directors, having been for many years past in the habit of receiving Consignments, and Bills of Exchange, from their connections in India, it is not reasonable to restrict them from it now. An official account of such transactions, has been produced to prove the practice; and notwithstanding abuse, it is said, has as yet been charged against it. A late
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Act of Parliament, Sir, has opened to individuals a large portion of the trade to and from India. A rivalry is therefore now established, against the Company; and the Directors, who superintend their commerce, should not be Competitors against the Company.

The Agency transactions of the Directors, Sir, hitherto have been extremely trifling, and arose principally from family and friendly connections. The impropriety of making Agency a matter of business, has been generally felt, and has operated as a check against the adoption of it. We should not value a principle, Sir, by the terms in which it is described, but by the importance of its operations. Hitherto the practice of Agency by Directors, has been insignificant, and principally limited to friendly accommodation. But now that the Private and Privileged Trade of India must be enlarged to fifty times beyond the former extent, this restraint against Directors, at all times proper in point of principle, is now unquestionably necessary. I will venture to assert, Sir, that both the interest of the Company, and the official independence of the Directors, cannot be safe without it.

If the Servants and Dependents of the Company in India, make large and profitable Consignments to Directors, they will expect in return, protection from the power of those whom they employ. It will be for the interest both of the Agent Director, and his Correspondent, that the Company's mercantile plans and operations, should be made subservient to their own, and for this purpose an Agent, or Trading Director, has many resources. From this circumstance results another evil: the privileged Trade of India, reserved by Parliament for British Merchants and Manufacturers, will be engrossed principally by Agent and Trading Directors; for their official advantages, applied to promote their private objects, must preclude competition.

I cannot imagine, Sir, that the friends of the Honourable Baronet in the city, will support him on this occasion, for the Merchants of London understand the principles of Commerce better than most men, and consider a fair and equal System of Trade, as the best friends to the city of London; and I trust that another Honourable Director will meet with but as little support at the other end of the town. The Minister of India may be strong in his measures, and this Company has experienced that he is so, but he will not be inconsistent. He may be partial, and lively in his attachments to particular men, but he will never forget, the policy of his own Act. He will never contribute

bute to establish the *monstrous* proposition, which gives both privilege and controul to the same persons. He never can consent to transfer that monopoly, held and exercised by the East India Company, upon an honourable principle, because granted by the State and for a beneficial consideration to the Country. I say, Sir, he never will transfer that monopoly to the hands of individuals; because all private monopolies are odious and detestable, whether resulting from actual grant, or produced by a perversion of publick power.

An Honourable Baronet, behind the Bar, told us that a Broker is more competent to give information and advice upon the mercantile concerns of the Company, than a Director. This may be the case, but the inference from it is the reverse of what has been suggested by another Gentleman, on the same side of the Question as the Hon. Baronet, who appeared to tremble for the consequences, if any of our Mercantile Directors were driven from their stations by a restriction against trading to India. I differ from both, Sir; I think Gentlemen conversant in trade, are necessary in the India Direction, but I am astonished that any person should deem the secession of one or more mercantile Directors, an irreparable loss. It is a libel upon the city of London, it is a libel upon the commercial character and opulence of the Country, to suppose that there are not numbers properly and sufficiently qualified for stations behind that Bar. I wish with all my heart, that the city of London could raise 20,000 men for the defence of its property and their country, with the same facility, as I am persuaded, it could produce a thousand mercantile Gentlemen equally responsible in character, fortune, and abilities, with any Gentleman behind that Bar. This assertion is not made to disparage the just pretensions of any Director, but to assert the honour and mercantile respectability of the city of London.

I trust, Sir, that the Gentlemen behind the Bar, will give me credit, when I say, that in the observation I have made, no allusion has been intended either to their character or conduct. I am ready to admit, that in these respects, they stand upon high and unexceptionable ground in the opinion of their constituents and in that of their country. The arguments which I have employed to support my opinion on the important Question of the day, have been drawn, as I conceive, from human nature, such as it is in these times. They are supported by what I conceive to have been the principles and practice of all who have preceded

us in the busy scenes of the world. It is from such authorities, I deduce the sound and salutary maxim that in all cases where publick power is delegated, it is wise and necessary to guard the trust from the intrusions of private interest.

It is, Sir, to me, a matter of much astonishment, that some Gentlemen behind the Bar, distinguished as they are by superior intellect, should persist in a contest, where private pursuits are opposed to publick duty, and a privilege claimed, which, by its operation, has a direct tendency to injure the rights of their fellow Citizens, and is, at the same time, dangerous to the interest of the East India Company, of which they are the appointed guardians, acting under Oath. There never was a case, Sir, in which principle was more compleatly at issue with private feeling, or the common interest of all, more directly endangered by the unreasonable pretensions of a few individuals. However high their character, and strict in their adherence to publick duty, suspicion will attach in this, and every case, where men in office are allowed to enter into a direct competition against their constituents. In all the corporate and publick societies of this city, the Directors are expressly barred from such competition.

I trust, therefore, Mr. Chairman, that the Gentlemen behind the Bar, will be satisfied with the ample testimonies given to them this day, from every part of the Court, of esteem and respect for their characters; and that they will not shake this good opinion, by contending for a privilege, incompatible with a fair and free system of Trade, the professed object of the Act of Parliament, and dangerous to the interest of their employers, the Proprietors of India Stock. If any Gentleman behind the Bar, or any friend of a Director, should ask me if my confidence in their integrity and ability, is not such as to induce me to concede a dangerous privilege to them? I should answer, that I know them to be men of honour and incapable of abusing such a trust. But if the Honourable Mover of the Question, or any other Gentleman in Court, should put this other Question to me, (and in this case it would be perfectly fair to put it,) whether it is wise to make such concession in favour of a few honourable characters, at the risk of establishing a dangerous precedent, I should certainly answer, that it is not prudent to do it. A publick principle should not be sacrificed either to private interest, or private partiality.

Alder-

Alderman *Le Mesurier* said, the Honourable Gentleman who spoke last, had made a most severe and unmerited attack on the character of the Merchants of London. He had indulged himself in stating a variety of cases, in which he conceived a Director, being a Merchant, as likely to act for the benefit of his employers and to the detriment of the Company. The Alderman denied that it was possible for a Director, however wickedly inclined, to act in any of the ways which had been stated, and that if he did, not only himself, but every Director who might act or connive with him, must expect to have their conduct exposed to the just indignation of the Proprietors and of the Public; and to receive that punishment which they would so justly have merited. To prove that he was right in his argument, it would only be necessary to mention one of the many cases stated by the Honourable Gentleman. He had said that it was possible for a Director to receive information from his correspondent in India, that *copper* was much wanted there, with a instruction to send him 500 tons, that at the same time indents might be sent to the Court of Directors for 2000 tons, and that the Director forgetting his duty to the Company, and consulting only his own emolument, should prevail on his Brother Directors to send only 1500 tons of the quantity indented, thereby to secure to himself and his friend the certain advantageous sale of his 500 tons! Was it possible for such a transaction to take place without being instantly discovered, and the parties brought to immediate punishment? Was this the way in which a British Merchant, in a high and responsible situation, ever acted?—It had been admitted that the first object of a Director, being a Merchant, might be the preservation of his honour and character, but that the second and principal object of his life was, the acquisition of wealth. Was there no other motive, paramount to these, that suggested itself to the Honourable Gentleman's breast? What did he think of that solemn sense of his duty, that faithful and honest discharge of his public trust, which every Director was bound to entertain, who ever considered that it was not here only, but before another high tribunal, that he was bound hereafter to give an account, which would be decisive of his eternal happiness or misery? He trusted that there were men behind that Bar, whom the *mens sibi conscia recti* enabled to look forward with hope and confidence to that final adjudication of their motives and actions. For himself, after the responsible situations he had filled, he should be ashamed to face a public body like the present, if he could not assert with conscious integrity, that his actions had always flowed from pure, honest, and disinterested motives. And what he said of himself, he would say of the British Merchants at large, to which profession the Honour-

Honourable Gentleman now belonged, though he had not, like himself, been bred to it. He thought it very extraordinary that it should be at a General Meeting of an *United Company of Merchants*, that arguments so injurious to the character of a Merchant should be brought forward, but the Honourable Gentleman not satisfied with this had gone farther; he had said, that he trusted the Hon. Director would not have sufficient influence with the *Ministers at the other end of the town* to counteract the opinion of the General Court. The Alderman said, he would ask, what right there was to suppose that either the Honourable Director or the Ministers would combine to act in a manner so injurious to the Company and so unworthy of their characters? With respect to the Motion before the Court, it was so injurious in its principle, and would operate in so many ways, that he was sure, from the known candour and liberality of the Honourable Mover, that if he had considered it maturely and had not as he had done, committed himself in print on the subject, he would have felt the evil tendency of it so strongly, that he would not have pressed it upon the Court. It was impossible to say how far the Motion, if carried and framed into a law, would extend. As to the Question of, whether a Director might with propriety be allowed to act as Agent, but not as a Principal?—he should not consider that, being himself of opinion that there ought to be no distinction, but that the Director who was allowed to hold the one situation, might with the same honour and integrity pursue the other; but if the Motion was carried, a vast variety of cases would occur, wherein Directors would be forced to relinquish objects which they now legally pursued. Among others, it would follow, that no Director would under-write an East India ship; that certainly was being indirectly concerned in the *trade to and from India*, and this, in the present dearth of under-writers of respectability was, he was sure a restriction not to be wished. This and many other cases that would occur, if the Motion was carried, would certainly have the effect of deterring the Merchants of London from becoming Candidates for the India Direction, and it would be seen upon examination that the number of Directors of that description had of late years decreased, and that though there were now several Gentlemen who were offering themselves for the Direction, not one he believed was a Merchant. The Merchants in London, of fortune and respectability, were not fond of offering for public situations which were likely to be attended with much trouble and disagreement; they were anxious for seats in the Direction of the Bank and other Companies, where they were sure to find an *united Court of Directors*, judging candidly of each others actions and motives, and

and supporting each others characters whenever attached. A Merchant of character will be cautious how, by entering into the India Direction, he renders himself liable to an attack like the present, for some transaction or other, which may have passed through his counting-house, for it is impossible for a Merchant so to watch over the operations of his house, as that nothing in the shape of Indian Agency or Trade, should pass through it, and in the event of it, the Director would be liable to the mortification of having his character suspected, if not impeached. As to the merits of the Question before the Court, he conceived they lay in a very small compass. Until the last Act, the Trade to India, was prohibited to British Subjects in general, as well to Non-Proprietors as to Proprietors and Directors, but the new Act, adopting a more liberal system, has allowed the privilege of *trading* to all; and the Directors, therefore, by having the privilege extended to them, stand with respect to his Majesty's other subjects, in no other light than before the Act passed.

Much blame had been imputed to the Honourable Director (Mr. D. Scott) for coming forward in so conspicuous a light, as an East India Merchant, but in his opinion (the Alderman said) it was no more than what might have been expected, from the manliness of the Hon. Director's conduct, and from the opinion which he had uniformly maintained. Immediately on the Honourable Director's return from India, he pointed out to the Court of Directors, and to the Public, the advantage which would result from adopting a liberal and extensive system of commerce with India, and what was the consequence? The Honourable Director was soon elected to a seat in the Direction, wherein he continued to urge the good policy of relaxing in their restrictions on the Private Trade, and having successfully exerted himself in the Court, he retired for a twelvemonth by rotation, and was re-elected into the Direction, without opposition. The Honourable Director's public and private conduct, had been uniform; it was honest, open, able, and manly, and he trusted that the Proprietors would stamp their approbation of it, by rejecting the present Motion.

Mr. Metcalf, (a Director) declared he entirely concurred in the opinion of the Honourable Gentleman, who had brought forward the Motion, and with those Gentlemen who had spoken in support of it. He was convinced, that a Director ought neither to be allowed to share in the Private Trade to India, nor to be permitted to act as an Agent, and so early had he adopted these sentiments, that when he first came
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into the Direction, he had withdrawn himself from the firm of a House, in which he had been concerned, that had commissions to a large and lucrative amount from India. If, however, he had not in that instance been afforded an opportunity of giving so decided a proof of his opinion, the arguments he had heard that day, would have served to obtain his Vote in favour of the Motion.

[The Court became at this period very tumultuous; and there was a general cry for the Question; when *Serjeant Watson* rose, and, upon the Proprietors becoming attentive, expressed himself to the following effect.]

Sir, it is under no slight degree of embarrassment, that I desire leave to proceed at this late hour, considering the very strong and general inclination manifested by the Court for coming immediately to the Question. It does however, seem to me, that there are many remaining considerations applicable to the true decision of the matter in debate, which have not yet been touched upon, and some of which are essentially requisite to be duly weighed, before we can properly decide. If it had been my good fortune to meet your notice sooner, and to obtain a favourable audience, I should, perhaps, have been tempted to obtrude at too much length, upon the patience of the Court; for I have seldom met with a subject of more importance than, in my mind, this is rendered, by some of its accompanying circumstances, and by the time and mode of its being brought into discussion. But some topics on which I should have enlarged, have been anticipated more clearly and forcibly, than they could have been urged by me, (especially those of a mercantile nature) by an Honourable Baronet behind the Bar; I will, for the sake of brevity, pass over others entirely; and by rather simply stating, than arguing fully, such as I deem most essential to be still dwelt upon, I promise to occupy as little time as possible. It is rendered, I confess, extremely difficult to be very concise by the versatility, rather than by the variety, observable in tracing through the speeches, spoken and printed, by the Honourable Proprietor who has brought the business forward, and by others, who have taken the part of supporting him. He has himself to day, recapitulated his former discourse, and still persists in contending that Private Commerce, or Agency, by East India Directors, is inconsistent with the interests of the Company, and with justice to other traders: and notwithstanding a declaration, that if in his former discussion of the subject, he might

might have fallen into an error, he should, upon conviction, be ready to retract; he also persists in asserting, that the Oath of the Directors, as it stands in the new law, was introduced without the knowledge of the Proprietors, or of the Directors themselves, and in violation of an express agreement. This is a bold and strong assertion, for which he continues to declare that he rests upon documents, upon the general spirit of the Company's commerce, and upon the assumption of another supposed fact, as if it had been formally, and in terms agreed, that one new Oath should be introduced *over and besides the old oaths*. The Honourable Gentleman does not seem to have yielded this point at all, down to the moment at which I am speaking; and for that reason I must as well recur to what other Gentlemen have said in answer, as produce more fully in detail, the absolute proof there is, in contradiction to this broad unqualified assertion; which was certainly too lightly made at first, as he was immediately informed, and has been persisted in to a degree unexpected on my part, and quite unaccountable.

The new arguments of this day, which I shall think it most material to examine, are, I think, reducible to two; or rather may be resolved under two leading heads; one of which is brought forward in the shape of a warm but general declamation upon the depravity of human nature, and followed by some excellent maxims of theoretical, abstract morality; the other stands, I think, upon a sort of speculation, as if the Court of Directors at present, and for the future, must rather be looked upon as *a cove of Free-Booters*, than deserve to be treated with the confidence belonging to the Governing Department of a Great Company, filled with honourable men, chosen by the suffrages of their fellow Proprietors.

[The expressions here used, were marked with some disapprobation by the Advocates for the Motion, but the Serjeant persisted in saying, that if Gentlemen were disposed to hear him out, he would demonstrate this to be the nature and tendency of one class of their Arguments, which he was about to combat.]

He then proceeded: I feel myself precluded, Sir, by the lateness of the hour, and restrained by a desire to comply with the apparent impatience of many members of the Court, from going over all the ground of debate, that has been taken by the advocates in favour of the motion. Accordingly I shall dismiss, without remark, a great deal that has been advanced

advanced, with regard to the operation of general principles, and rue of moral conduct; much of this I am neither obliged, nor disposed to combat. My only quarrel with it is, a want of application to the case in hand; what we have here to do with, is the actual circumstances of the East India Company, with relation to the late Act of Parliament, whereby a novel species of commerce is introduced, and the operations of a legalized Private Trade with India, are controlled.

And therefore, I do not consider that it is our business at present, to argue the mere abstract proposition, whether the best Agent to employ in any business, is likely to be one who has a private separate interest in the same, or one who has none. On the contrary, our attention is called to a subject of practice and experiment, proper to be considered upon grounds of expediency and use, according to the nature of the subject, and the practical combination of all circumstances belonging to it.

I shall accordingly endeavour to bring the consideration of Gentlemen, who seem to have been misleading themselves, into unprofitable speculations, to what I take to be the true state of the Question; and shall only animadvert, in passing, upon such observations, as appear to me most to require confutation.

It may not be improper in this place, to take notice of an idea suggested by an Honourable Proprietor, (Mr. Henchman) for dividing the Question; to which I do not, for one, intend to object, if it is really desired, being totally indifferent whether I give my negative to the complex proposition as moved, in one vote, or to each branch of it severally; although I certainly do not feel the force of the distinction between the case of a Principal, and that of an Agent, upon the present occasion. But they who do feel the distinction, and think that Agency ought to be permitted to the Directors, whatever they may think of the more appropriate trade of a Principal, must vote against the present Question, as it is framed, for the self same reasons that would induce them to vote against the branch of it to prohibit Agency, if severed.

And as to the entire Question, I must, Sir, call upon the Court for attention to the situation in which we stand. I must beg of Gentlemen to recollect and revolve in their minds, what has so recently passed between the public and the Company; that the bargain finally settled, after full consideration had, upon all the terms and stipulations contained in it,

was concluded by our own free consent, is highly advantageous to the Company, and has received the confirmatory sanction of Parliament. From this prospect, let us then turn our eyes to the predicament, into which the Company may possibly be cast, by an adoption of the measure proposed.

Let us consider the period and circumstances under which we are debating; not at the first formation of a Chartered Company to trade exclusively to India, nor at the time of its first modelling to trade in a joint Stock, where much scope would have been given to the influence of speculative opinions, relative to some of the points insisted on: but we are now at the point of trying a practical experiment upon a new principle, which has been considered, as far as theory goes, and voluntarily adopted, with respect to the commerce to and from India. We are at the point of trying whether, in fact, this principle can, or cannot be advantageously applied for promoting the united interest of the Company, and of the public, in the prosperity of our Territorial Possessions.

For better understanding how this matter stands, it may be worth while to turn to the history of the Company, in order to mark the several stages of its progress, and the different application of commercial principles, to its different conditions.

The first formation of the old *London Company*, was by a Charter from Queen Elizabeth, in 1601; and other Charters were, upon different occasions, granted to that Company, by *James the First*, *Charles the Second*, and *James the Second*. The trade was carried on by subscriptions; and each Member, with his sons, apprentices, factors, and servants, traded, at first upon his own separate Stock, to the amount he chose to adventure upon each respective voyage, in the general ships of the Company. And it was also provided, that persons licenced under the seal of the Company, might carry on commerce within its limits.

In the progress of the Company's trade, it was soon discovered that advantages would attend carrying it on in one common Capital; and in a Charter of *James the Second*, it is recited, as a ground for enabling the Company to carry it on in one *general joint Stock*, that it could not otherwise be conducted to national advantage.

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Upon the surmise of a forfeiture, which the Crown would not take advantage of, a Charter of confirmation was, in the *Fifth of William and Mary*, granted to that Company; and a second, the same year, with a view to make the East India Trade more advantageous, in a joint Stock, with an enlarged Capital. On which last occasion, the Company was prohibited from licencing any private ship to go to India. But it was thought adviseable, by another Charter, the next year, to authorize the Company to licence persons to trade on board ships in the Company's employ, in such articles, and to such value, as a General Court should allow. A provision was also introduced, to direct the annual exportation of English manufactures, to the value of one hundred thousand pounds.

These several Charters, to the *Governor and Company of Merchants of London, trading into the East Indies*, all rested on the basis of the Royal Prerogative alone. But in the *9th* and *10th* of *King William the Third*, his Majesty was authorized, by Act of Parliament, to incorporate the subscribers to a Loan of two Millions, by the name of the *General Society*, with a right to its members, and persons licenced by them, to trade individually to the East Indies. And it was further enacted, that persons who held shares in the Capital Stock of that Society, might be incorporated into a Company, to trade in a joint Stock, by such name as his Majesty should see fit.

In pursuance of this Act of Parliament, the Charter, dated the *5th* of *September*, 1698, passed the Great Seal, to incorporate certain Members of the General Society, by the name of the *English Company trading to the East Indies*, and all persons admitted into this Company, were restricted from trading to or from India, otherwise than in a joint stock.

The foundation was hereby laid for the present Company, which received its compleat establishment in the reign of *Queen Ann*. This *united Company*, was formed out of the London Company, which having been continued by the before mentioned Act of Parliament, to 1701, had subscribed largely into the stock of the *English Company*, and the *English Company* itself, upon a settlement agreed to be made, and finally concluded by arbitration.

I shall have occasion, by and by, to recall the recollection of Gentlemen to this statement, when I come to consider the arguments that have been particularly applied to the case of Directors, as distinguished from

from other persons, and to examine the grounds of what has been alleged respecting their Oath. But first, it may be observed in general, that the narrow policy by which the *exclusive trade*, so fixed, has been regulated and carried on for almost a century, is too similar to that which had prevailed for a century preceding, among the Freemen of the original Company. Free Merchants, and Mariners, have indeed been licensed from time to time, to trade in India; and privilege for carrying goods freight free, on board the Company's ships, has been allowed to Captains and Officers. But with respect to the management of the trade by the Company itself, it has, during both periods, been supposed, that, as the profit upon each article of merchandize, is greater, and the expences of navigation are less, in proportion as fewer commodities are exported and imported, consequently the net profits would be higher in proportion to the Capital employed, upon a confined scale of commerce, in preference to a more extended one; and the total amount of the one, be equal to that of the other, with less risk.

This notion, as applied to the monopoly alone, without any regard to the general Commercial Interests of Great Britain, has some shew of reason; and prior to the acquisition of the immense Territorial Possessions and Revenues, now belonging to the Company in India, such a partial regard to its Commercial Profits, might be founded in more truth and wisdom, with respect to the Company itself, exclusively, than at present. But in modern times, the mistaken nature of this system, as applied to existing circumstances, and to the community at large, is visible from the encroachments made by Competitors, and from a due attention to the change produced in our affairs, by reason of our acquisitions abroad.

Independent of the direct interest we have in these acquisitions from the Sovereignty, the Revenues, and the Rents acquired with them, an interest has grown out of them, purely Commercial, by reason of the increased demand for European Commodities in India, and for those of India in Europe; for trade will always find its own level, and overflow through illicit channels, if not allowed a sufficient current in its proper course, when once a course is opened for it between two countries. We cannot, therefore, be at a loss for the cause of the unlicensed and contraband trade which has been for many years carried on between India and foreign European Ports, with British Capitals. Every one has been long convinced of this fact, although legal proof of it, against the persons directly amenable to our Courts of Justice, was hardly ever to be
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procured; consequently there did not exist any effectual remedy for an evil, which had at last risen to an enormous and alarming height. At this crisis, the wisdom of the Legislature provided the remedy contained in the late Act of Parliament, whereby a legal channel of export is opened for British manufactures and merchandize, beyond what the Company's Indents call for, instead of their continuing to be smuggled out to India under foreign Commissions. I think, therefore, that the Hon. Gentleman (Mr. W. Lushington) who alluded to this Act of Parliament, and called upon us to suppose what interpretation the Minister for Indian Affairs, will put upon a Director's trading under it, is mistaken in supposing that any thing can be discovered in such trading, under the regulations of the Act to contravene the principle, the provisions, or the policy of the Act itself; which, as far as relates to the present Question, was digested by the India Minister with the deepest consideration, and is intended to operate as an effectual barrier, erected against unlicensed British Traders to India, and by the same operations to encrease the export of goods, which are the growth, produce, or manufactures of this country, by every advantageous mode that can be devised; for the purpose of jointly promoting the common interest of private Merchants and Manufacturers, of this Company, of India, and of Great Britain itself: and all this upon a principle which, if I mistake not, this Honourable Proprietor himself, expressly approved and commended, at the time of the negotiation; and does not seem now so much to disapprove, as the Honourable Mover of the Question does, provided Directors are not concerned.

Let us then, Sir, most seriously reflect, that we cannot wisely reason upon this Question now, according to the supposition of its standing as it would have stood two hundred years ago, at the first dawn of English commerce with India; nor as it might have appeared in 1698, or afterwards, at the union of the two Companies, early in the present century; no, nor as we might have been permitted to do, if we had thought it for the interest of the Company, when we were negotiating the bargain so lately ratified with the Public. But in fact, I believe we were nearly unanimous in not supposing that a practice, similar to what is this day contended for, could be beneficial to the Company, considering how much the state of things has altered within the last century; and more especially within the last thirty years, by reason of our acquisitions in the East, and by means of that species of commercial rivalry, which has grown up with the contraband trade.

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I must, Sir, repeat the admonition ; do not let us forget the point of time when we are called upon to debate this matter ; during the probation, in the year 1794, of an experiment, only agreed upon in the year 1793, to be tried, under the sanction and authority of an Act of Parliament, made in confirmation of the entire bargain, settled between this Corporation and the Public. By that Act of Parliament, the new Principle to which I have so often alluded to, has been sanctioned too recently, and too strongly, to be easily contradicted by the agitation now set on foot. And, at all events, I am persuaded that an attempt to subvert this principle, by any indirect measure, like that which is now attempted, never can succeed.

This principle does, I admit, undoubtedly obtrude upon the form, and in some respects upon the substance of the antient Monopoly ; the Exclusive Trade, which was nominally, but hardly in reality, held by the Company, is now opened to a specific and limited extent ; with a view to prevent the monopoly of the Company from operating against the country at large, and upon the presumption, that admitting Private Traders, under proper regulations, to traffic to and from the territories, subject to the Government of the Company, in the character of Sovereign, without considering how far this may or may not, be setting up commercial rivals and competitors, will be for the general good.

And even with respect to the Company itself, nothing can be clearer than that, if its mercantile profits are lower in a great degree (and I need not stop to prove, what we all know, that they are infinitely smaller) than the net receipts of its revenue, then retaining the exclusive monopoly in trade, is prejudicial to the encrease of its wealth, in an exact *ratio* with the difference of interest, (as to the nature of it I mean) between the Sovereign of a country, and a Merchant within the same country. Yet I acknowledge this argument is not sustainable, in the present case, to the extent to which it has been carried by some (Dr Adam Smith in particular) of making it necessary or right to abolish the East India Company. Its exact bearing seems to be upon the very point on which the private commerce, through the medium of the Company in some respects, and immediately under its eye in all, which is authorized by the late Act of Parliament, has been made to rest. The benefit likely to result from thence to India is, that many articles of consumption may thereby be introduced to the Company's dominions, and afforded cheaper there than usually heretofore; in consequence whereof, the productions of those dominions, may be expected to encrease

crease, which must be advantageous to the inhabitants; and an advance of revenues in the like *ratio*, will enrich the Company, not merely by filling its treasuries abroad, but by realizing at home through the medium of its own commerce, the wealth so acquired; and in the acquisition of which, the legalized private traders, of whom I am speaking, are expected to be the assistants of the Company, by the very means whereby illicit traders have been heretofore its rivals. In which event, if the plan succeeds, the produce of the Company's sales at home, instead of decreasing, may be expected to encrease. And undoubtedly benefits of a similar kind with those proposed for the Company in India, are expected for this country of Great Britain; more especially as the articles exported to India, are to be of the growth, produce, or manufacture of Great Britain; and even if they were not all of that description, her navigation and revenue would feel the benefit of goods passing by this route, rather than directly from foreign countries; and British Merchants also, would enjoy their share of profit, although indeed, the Manufacturers would have none in that particular case.

So much, Sir, for the principle; which I have chosen to consider on its general grounds, because if I understand the true drift of the arguments which seem to have made most impression, they are aimed to subvert the plan itself, which has been recently introduced upon this principle; although partly with a double aspect, and partly to impress them the stronger, they are one while pointed, as if against a particular Director; another, as against anyone Member of the Court, by chance; and another while, indiscriminately at, or rather through the sides of the whole Court.

Sir, every dart thrown at a Director, on this occasion, appears to be aimed with a view to wound the measure itself.

I can see no way of separating the two objects, but by supposing that Gentlemen are actuated by rival interests, and a spirit of competition; which I will not judge so harshly of any of them as to suppose notwithstanding one argument about injustice to other Traders, which shall not be forgot in its place, rather seems to wear that aspect.

But putting all personal interests out of the Question, is this a proper moment, upon any public ground, for treading back the steps of our bargain? Can the remarks which the Honourable Director, who seconded the motion has made, after first assuming that *all* private trade must necessarily

cessarily be illicit, and in diametrical opposition to the interest of the Company, justify our attempting suddenly to break off the bargain, were it in our power? for admitting the general truth of his doctrine, as applied to persons carrying on the illicit trade from foreign parts, under foreign commissions, that such private Traders are in some sort rivals of the Company, and therefore to be guarded against; the enquiry will revert, how is that guard to be most effectually and securely placed? and the answer which we agreed to give, which the legislature has adopted, and upon which we are called upon to act, is, that their rivalry to the Company may, and shall be destroyed, by establishing a counter-rivalship to them, in the hands of such individuals as may chuse to undertake the enterprize; giving to those individuals, in some respects, a common interest with the Company itself; and at the same time, a capacity under lawful sanction, to counteract those rivals; in the effectuating of which end, they will be greatly assisted, by having it in their power to use means, which it is obvious in theory, and has been manifested by experience, the Company could not employ in practice. And this remark may be applied to what has been already observed upon, as said by an Honourable Proprietor, respecting the policy of the last Act of Parliament; an Act most seriously and deliberately framed and passed. For the Bill was introduced into the House of Commons, by the minister for India affairs, conformably to the terms previously discussed, settled, and agreed upon in this Court. It was received here in its original shape, and in that first stage carefully discussed. The negotiation with ministers, as to various points of detail, not brought forward in the first copy of the Bill, but afterwards introduced, was continued. Every enacting Clause and Proviso contained in the Bill, from first to last, underwent due consideration in this place. And the result, united in it the ultimate concurrence, not only of those individuals who were the most active negociators, but of the Court of Directors, and this Court; of the Board of Controul, and of both Houses of Parliament, before it received the Royal Assent.

From hence it appears to me the more extraordinary, that the Honourable Gentleman, who brings forward the present motion, and who himself took an active part in the discussion here, both during the previous negociation, and upon the Bill itself, could have fallen into the blunder, in which he perseveres so steadily, respecting the Directors Oath; a blunder which he introduces in his printed Speech, with a great parade
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of astonishment, and self-censure, for permitting it to be introduced as it stands, without his notice and disapprobation; that he supposes an alteration to have been surreptitiously and secretly introduced, and upon that supposition, he imputes blame most lavishly, but indeed, without expressly naming the person or persons to whom he would have it applied. The *Court* of Directors, he says, (marking *Court* emphatically by printing that word in Italics) may be free from blame; but he must plainly say, that if any Director had known of what he describes as an alteration, and concurred in bringing it about, he must be highly reprehensible; and the Honourable Gentleman speaks plainly enough, not to be misunderstood, that he considers it to have been brought about with a wicked and corrupt view, by printing all his *ifs*, and other words of insinuation, also in Italics.

When I heard and read what I have just alluded to, and other passages of a like complexion, I certainly did think them intentionally pointed against the Honourable Director, whose application to send out goods on freight, as an Agent, was made the original ground of the Question now under consideration. I know that I was not by any means singular in thus thinking; and there seemed the more probable cause for so applying the *incumbe*, by reason of the direct charge brought against that Director, on another point, respecting which the investigation made by the Court of Directors has set him up so high.

But if I understood the Honourable Proprietor correctly, to day, he has distinctly and positively disavowed any intention to make this personal application. Since, however, in stating his surmises about the Oath, he has put the case, as he terms it, hypothetically, I must consider this explanation, as admitting it to be but barely *possible* (a word which he also distinguishes in his printed speech, by Italics) in his opinion that what he blames so much, and so justly, if the fact would bear him out, might have been owing to a mistake. It remains, therefore, to be inferred, if the application is not intended by him, or, since his disavowal, understood by others, to be made to the Honourable Director alluded to, that it must take its chance of hitting some other member of the Court, without so express an aim as at first I conceived it to have been directed with. And in either way of viewing this incident, I could not listen, without absolute amazement, to the declaration of the Honourable Director who spoke last behind the Bar, when he said that he felt no uneasiness at the insinuation, knowing, as I do, the virtuous and honourable sentiments

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by which the general tenor of his conduct through life has been actuated.

But to return to the consideration of the Oath; the Honourable Gentleman has said, and printed, that *by express agreement, four Oaths* were to be taken; and that what the Act of Parliament has done, by imposing one Oath only, is diametrically opposite to what was agreed and resolved to be done. He has stated that during the negotiation with Government, the form of a new Oath was proposed *and agreed to*, as printed in the Clause marked with the letters *M. M.* He has said that Clause was agreed *to be added* to the Bill; and that he found here the most positive assurance that no Director should be allowed to trade to India, but on the Company's account, and found in the Act of Parliament, a direct violation of what had been so *clearly* and positively assumed. I do not wish to detract from the clearness, or the boldness of this assertion. He next proceeds to substantiate what he has so asserted, by giving as a History of the Oath, what I dare say, he believed to be true; for he introduces it with a parade about the industry of a man of business; and that he must be a poor man of business, who cannot submit readily to the dulness of investigation. And notwithstanding I shall demonstrate that he has too precipitately taken up a mistaken notion of the whole matter of fact, relative to this Oath, he persists in the same error, under the same temper to this day; for after assuring us that duty, not ill will to any individual, has urged him on, he says that he has continued to bestow upon this subject, the most attentive consideration. Thus he persists, for six months together, nay, to this late hour of the present day, notwithstanding he was admonished of his error when first he broached it here in *June*; notwithstanding we are witnesses that he has bestowed so much consideration upon the subject since, as to recollect and publish his Speech; notwithstanding an answer has been published, with reference to dates, whereby, with a very small portion of the dulness of investigation, belonging to a man of business, applied in the search for a few minutes, he might have seen his error, and might have been prepared at the opening of the Court to day, instead of the farther parade of declaring his *readiness* to acknowledge a mistake, actually to have made the acknowledgement; and notwithstanding what has been stated by an Hon. Gentleman (Mr. Henchman) sitting a few benches before him, who took a principal part in the formation of the Oath. I will therefore, with the permission of the Court, call his at-

tention once again, to what did actually pass upon that subject, as well in Parliament as here.

After the Bill, as it was brought into the House of Commons, and first printed with blanks, had been read in this Court, and considered clause by clause, on the 13th of May 1793, the Hon. Proprietor, just now alluded to, made a Motion, the purport of which was, that the Oath usually taken by the Directors, might be made *to embrace three* additional objects enumerated in the Motion; not as the Hon. Gentleman imagines that a new additional Oath should be imposed distinct from and over and besides the old Oaths, for *two* objects only. So much for the accuracy of his investigation at its commencement; for the Court, in compliance with the Motion, resolved that an Oath should be framed, grounded upon it, that is to embrace all the objects proposed.

On the next day, the 14th, the House of Commons, in a Committee of the whole House, filled up the blanks in the Bill, made several amendments, and added between thirty and forty new clauses; and, upon the speakers resuming the Chair, it was resolved to receive the Report on the 16th, for which day a General Court was also summoned, and met; and the Report of the Bill in the House of Commons, was put off till the next day.

In the General Court, on the 16th, the Bill, with all the amendments made, and clauses added, in the Committee of the House of Commons, underwent further consideration, paragraph by paragraph. And when the last clause but one, marked *M. M.* the same that has been so often referred to, was read instead of being agreed to, as the Hon. Gentleman has asserted, it was absolutely, and altogether rejected; not indeed, I believe, by a formal Question being put upon it. But every one who attended to it, felt that it was not what had been resolved to be done; and it was left, without a Question, by a kind of general consent and acquiescence, to the Hon. Gentleman who had made the Motion on the former day, to take upon himself the trouble (which he very readily did) of settling with the Company's Solicitor, a proper clause to embrace the old Oaths, and the three objects of his Motion. He has himself given so full a detail of this part of the transaction, that I need only add, the draft so prepared to correspond with the Resolution of the General Court, on the 13th, by embracing
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and incorporating all the objects of that Resolution, was unanimously approved by the Proprietors, before it was adopted as a part of the Bill; and when adopted, the clause contained neither more nor less than the old Oaths, and the three additional objects before spoken of, combined together, and made to refer to the law, as it was to stand after the passing of the Bill, and does now stand. The argument about the great and important difference between the words *over and besides*, and *instead of*, like the supposed fact upon which it is built, resolves itself then into the shadow of that parade with which it is introduced, and has nothing substantial belonging to it. As to the proper application of the obligatory effect of the Oath, to past or present times, to the old law, or the new, we are obliged to the Hon. Gentleman for the exercise of much ingenuity, in suggesting an imaginary case, which no body thought of at the time, and which Parliament would not have endured for a moment, had it been then suggested. As little could it then, or can it now, be adopted by this Court. The trading sworn to be avoided, must, and can only be a trading contrary to the existing law. Thus, upon the whole, the argument, pompously as it is dressed, turns out to be pretty much upon a par with the supposed facts, out of which it is drawn. There is no solid basis for either.

To proceed with the real facts, by following the Clause, when settled by the Hon. Gentleman in whose hands the preparation was left, as I have related, into the House of Commons.

It was on the 16th of May, the Hon. Gentleman, with the Solicitor, undertook to prepare the Clause, and the report of the Bill was received the next day, the 17th, in the House of Commons. And upon looking into the paper Bill, preserved in the office there, which contains that report, I find the Clause *M. M.* (which it now appears had been actually inserted in the Bill in the Committee, on the 14th, without any agreement on our part, instead of being the thing agreed to be inserted) was, in consequence of our not agreeing to it on the 16th, disagreed to by the House of Commons on the 17th, upon the report; and it was so indorsed at the table.

With regard to the Clause substituted in its place, the Journal has this entry, "Another Clause was offered to be added to the Bill, prescribing

" scribing the Oath to be taken by persons who shall hereafter be elected Directors of the East India Company. And the said Clause being twice read, was agreed to by the House, to be made part of the Bill." Duplicates of this Clause, are remaining with the paper Bill. They appear, from the form of the writing, to have been copied fair in an Attorney's Office, most probably in the Company's Solicitor's. They are numbered alike, and the name *Russell* is marked upon one of them; which makes it probable, that instead of being surreptitiously introduced in any respect, this Clause was sent to the Board of Controul, after being settled, according to the understanding of the General Court, under the inspection of the Hon. Gentleman who took the care of it, and so that it was introduced and offered to Parliament, *with the common consent of all*, immediately concerned. On the other Copy, there is this indorsement, " Clause to be substituted for *M. M.*" And in the hand writing of Mr. Hatfell, are the words " added on the Report."

Both these Copies, of which I have just spoken, agree *verbatim*, between themselves, and with the Act of Parliament.

After the Report was entirely gone through on the 17th, and the Bill was ordered to be engrossed, a resolution passed for reading it a third time on the 22d, if then engrossed.

But as there was a regular communication and understanding between the Minister for India Affairs, who took the conduct of the Bill in the House of Commons, and the Court of Directors, through whom he carried on the negotiation with the Company, and as a General Court of Proprietors, was appointed to be held here on the 23d, the third reading of the Bill was, by motion in the House on the 22d, postponed to the 24th.

In that General Court, on the 23d, among several additional Clauses to the Bill, as appears by the Book of Minutes, one relating to the Oath of Directors was read. This was the very Clause, prepared and introduced, as I have stated, in the very words in which it now remains a part of the Act. I have only to add, as a further proof of the Hon. Gentleman's want of attention to what actually did pass, that this very Clause being received with approbation by this Court, on the 23d, the Bill was read the third time on the 24th, and passed the House of Commons without any amendment being made, or offered

to this Clause; although some alterations were adopted in other parts of the Bill. One attempt to introduce a Clause, without proposing the subject to a General Court, was, I remember, made; but that Clause did not seem to be of a nature to be submitted to the consideration of the Company; it was offered at the instance, as I understood the Honourable Member who moved it to state, of some persons concerned in the purchase of Teas; and the object of it, as far as I comprehended it, seemed to be to get a sort of control, or mastership in some respect, over the Court of Directors. That was the only attempt, as far as I know, surreptitiously or otherwise, to introduce any matter into the Bill, not in some stage or other submitted to the consideration of a General Court of Proprietors.

I shall conclude this tedious narrative by adding only, that the Bill having passed the Commons on the 24th, was printed in the House of Lords, and that it did not receive the Royal Assent till the 11th of June; which afforded a sufficient interval for the Honourable Gentleman to consider the clause, and to have called the Proprietors to the re-consideration of it, after being printed in the Bill *verbatim* as it stands in the Act.

He neglected, however, that opportunity of pursuing the dullness of investigation, so pleasing to a man of business. And if he had not equally neglected every opportunity since, of examining the evidence, preserved among the Records both of Parliament and the Company; repositories, I trust, equally faithful with the memories he speaks of on which he did rely: nay if he had not closed up his mind against conviction, he would never have asserted, much less would he have persisted to this very moment at which I am speaking, without recanting the assertion, that which I have related to have passed so openly, and upon so much deliberation was done "without the knowledge either of the Court of Directors, or of the Court of Proprietors; and in direct violation of what was most clearly agreed between Government and the Company."

The effect, which it is apparent the Honourable Gentleman considered the statement, into which he has been led astray, to have upon his argument, made me feel the necessity for putting it beyond all doubt

doubt, that he was in an error; that contrary to his supposition, careful attention was paid to the settling of the Oath before it was enacted, and the terms and phraseology in which it is expressed were duly considered; instead of any imaginary imposition being practised with respect to them, either in this Court or in Parliament.

It is equally easy to demonstrate that this Oath, in the particular objected to, is perfectly consistent with the system now adopted for the trade to and from British India; and that as far as its application relates only to the existing state of things, it is in a manner engrafted upon the plan, which may be traced upon the subject of Oaths, from the first existence of the Company.

A reference to the Oaths prescribed by those Charters, prior to the Act of the 9th and 10th *William III.* which rested solely on the Royal Prerogative, may not perhaps be acknowledged to afford any legitimate or conclusive support to my position, that every Oath relative to the mode of trading, should be made to apply to the existing state of the trade. Instances however, are not without their use. And we find that the *Freemen* of the first Corporation erected by *Queen Elizabeth*, were only to swear to trade in such manner as should be reasonably devised in any public assembly or Court of the Company. In subsequent Charters, appointing Committees for managing the General Affairs of the Company, the Members of the Committees were enjoined to take an Oath of fidelity in their offices. By the Act of Parliament just now mentioned, and before stated more particularly, the Members of the *General Society*, who were authorized to trade in their individual capacity, were enjoined to take an Oath, the substance whereof was, not to trade otherwise than they "lawfully might by that Act." Other persons to be incorporated, pursuant to that Act, to trade in a joint stock, were to swear "not to trade" on their private accounts, contrary to that Act." And those who were to have the management of the voyages, as Directors for the account of the joint stock Company, were to swear not to send any goods but such as they lawfully might, according to that Act. In like manner the Charters of 1698, to incorporate the *English Company*, in what related to Oaths referred in terms to "the said Act."

And as Members of the *General Society* might in that character trade separately, or in right of their stock might be admitted mem.

members of the English Company, in which character they were prohibited from trading otherwise than in a joint stock, we see a reason why all the Members of that Company were enjoined to take the Oath, which we find upon the Company's records to have been administered as recently as about the time of the formation of this united Company, and I rather think since; but it was always *with reference to the Act of King William*. So was the Oath of the Directors, down to the passing of the last Act 33d Geo. III. which I incline to think would have virtually annulled the concluding words of the old Oath, restricting the Directors not to trade "contrary to the Act of King William;" even without the provisions of the clause whereby the Oath is now imposed, limiting the obligation, by the Act of Parliament in which it is inserted; and by which Act *any* of his Majesty's subjects resident in Great Britain, may, on their own proper risk and account, carry on the trade therein specified.

With respect to the doubt started by an Hon. Proprietor, whether this permission being on their own risk and account, does not exclude Agency? there is ingenuity in his mode of proposing it; but the substantial answer seems to be, that the design was only that there shall be some person in Great Britain answerable for every consignment in the private trade to India, so as to pay all charges to, and take off all risk from, the Company.

But there is no distinction made in the Act, between Directors and Proprietors of India stock, or between persons of either description, and other subjects of his Majesty resident in Great Britain, except that the Directors are under the superadded obligation of an Oath, not to trade contrary to the terms of trading, which are alike open to them all, the others being only civilly amenable to the law for any transgression.

Arguing by analogy to former times, the legislature might have put other Proprietors under the same additional restraint with Directors, by an Oath not to trade contrary to the Act; but arguing also by the same analogy, the case would have stood as it does in the other view of it, unfettered by any inapplicable law.

Indeed where would have been the wisdom of the Legislature, to have enacted that you may do this; provided you may not do it contrary

trary to a law now *pro tanto* repealed, whereby you are forbidden to do it at all?

Upon reviewing these several considerations, I cannot, Sir, forbear submitting to Gentlemen, that it must wear a strange appearance, for this Court to break in upon an agreement so deliberately adjusted, and finally sanctioned by the wisdom and authority of the Legislature, without one new reason or pretence to suggest. With what face can we meet the Parliament or the public, if we should be forced back to treat with them, after such a wanton breach of faith, on our part? It will be wise, before we accede to the proposal for making such an attempt, to consider the danger, were it possible for us to succeed, attendant on the making it, by our setting the example of innovating so suddenly and unwarrantably; and to look well at the variety of mischievous consequences that might follow.

It is to the mischiefs which I thus sincerely deprecate, that the present Motion, in my humble apprehension, clearly and directly tends. I therefore consider the arguments drawn from a comparison between Directors and other Members of the Company, or private Merchants, not attached to the Company, even if they did not admit of the answer I have given, to have no proper bearing upon the merits of the real Question.

Of injuries to other traders, we shall hear other traders complain, if ever they arise; but as far as I can see at present, there is a sufficient equality. Upon this, and other mercantile topics, an Hon. Baronet behind the Bar, has as I said before, anticipated all I could advance, with such strength and clearness, that to attempt to follow over the ground he took, would be unpardonable in me.

As to the topic of competition, upon which the Hon. Director, who seconded the Motion, dwelt so much, and something has been said by all who have spoken on the same side, it has been sufficiently answered that in point of knowledge, there is no advantage on the part of Directors; since the exports and imports are all guided by the indents; and these are prepared upon the best information that can be collected, of which the principal part comes from the Merchants of the city of London, with regard to those sent from hence to guide the amount of the imports. And as to those which arrive from abroad, the fact that

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the Brokers have the very earliest intelligence, as soon as it arrives, remaining, I think unanswered by any of the remarks that have been made respecting that fact. The alledged injustice to Private Traders there, does not seem to have been made out; the assertion that no single advantage can result to the Company, from the Directors being allowed to push the experiment, of limited private commerce, bargained for by the public, amounts to no more than a different mode of saying, That it is wrong to make the experiment? Which notion I have endeavoured to repute.

The assertion that if the Directors act as Merchants in this respect, their private interest must be in competition with their public duty, has not been supported by any specific charge, but is like various other suppositions, on which Gentlemen have dwelt. Thus we have been told that confidence will be withdrawn from the Directors, and their credit with the Public be blasted; that they will be actuated only by self-interest, and all confidence between themselves, will be destroyed; that there will be an unjust and unwarrantable competition between them, in the character of Merchants, and the Gentlemen in the Company's service abroad; and that they will be the two successful rivals of Ship Owners, Commanders, and Officers; which are all surmizes that ought not to have been made without a solitary fact to bottom them; and yet they are urged, as if no combination of interests would stand against the evils so surmized. But the answer to the whole of which, seems to me comprised in what gave some offence, by my expressing it in strong words, but not more strong than true, that it supposes the Court of Directors, in their collective body, to be transformed, as by some magic art, from an assembly of men of known and tried honour, into a *Cave of Free-boaters*.

Whether to fix this stigma, and whether to fix it against one or all, it is remarkable, that even to the last sentence of the Honourable Mover's speech, we are particularly warned, in allusion to his fond idea about the Directors Oath, to beware of the exercise of a right so acquired.

After what he has here declared about not having intended any thing he has advanced upon that subject, against a particular director personally, I have no inclination to dwell upon what was the impression on my understanding, before he made that declaration. But then I must of necessity consider what he has put, to adopt his own phrase, hypothetically,

ly, as a random general insinuation, thrown amongst all the Directors, which each may apply either to himself, or to any one of his brethern. And therefore I cannot avoid repeating my surprise at what fell from an Honourable Director, whose feelings seem to have been struck, as if by a paralytic stroke, upon the present occasion.

I desire to appeal to him, whether the supposition of the markets abroad being iniquitously controlled (which is one of the imaginary cases put by way of instance) or any other of the imaginary mischiefs mentioned as likely to be perpetrated, by any one Director, no matter who does not pre-suppose the whole body of the Directors to be implicated in the guilt, by connivance at least?

I must here, Sir, advert to a turn that has been given by as Honourable Proprietor, in his reply to the respectable Baronet behind the Bar, as if his argument on the head of competition had admitted that the trading of Directors, whether as Principals or Agents, can more affect the interest which Commanders have by reason of their privilege, than the carrying on of the same private Trade or Agency by any other Merchants or Agents. Whatever competition there is, the law has made; but it is against and not in favour of the private adventurer, whether Director or not, and whether Principal or Agent, for he (and most strictly if he be a Director) must pay freight, whilst they carry their privilege *freight free*. But there is still a more invidious turn that would be given to this argument if by any hypothetical allusion, it were to be made the ground of supposing the Honourable Director so particularly and often referred to in the course of this debate, a particular enemy to that valuable class of persons, the Company's Commanders and Officers, when it is well, and I hope as generally known as the nature of the case will admit, that his opinion of them, and his conduct in all transactions with relation to them, has always been of the most liberal kind.

With respect to the transaction which has given rise to the present Motion, this Hon. Director is set on such high grounds by the unanimous Resolutions of the Court of Directors, founded as we perceive upon investigation, and by the reception which was here given to the Proceedings when they were read, that he of all men present, does not now stand in need of a defence; and give me leave to say, if that is the case with all his brother Directors, as I am perfectly

perfectly sure it is. The only substantial ground that could have been laid for such a Motion is completely gone from under this.

That which has been, perhaps, the real occasion of the Motion; is what, I think sets the merit of this particular Director on the highest pinnacle, that towards realizing by experimental proof the principle established by the late Act of Parliament, he has done much more than all the others, whether Merchants or Agents, who have applied for freight, conjointly. And still there is room left for those who fairly wish only to be competitors, instead of getting the whole to themselves.

Sir, we have been admonished to take the opinion of persons in power upon this Question. Why so? let me ask, if no breach of faith is meditated? for as far as goes to an exact execution of the provisions of the Act of Parliament, we enjoy by agreement, with persons in power, on behalf of the public, an interest united with that of the public, and sanctioned by the law of the land.

I cannot therefore, conclude, without again earnestly calling upon Gentlemen to reflect what would be the consequence of permitting such a Motion to be carried. It ought to be rejected as unnecessary in itself, unsupported by any proof that the mischiefs supposed have happened in any one instance, not rendered plausible by any reasonable apprehension of the dangers with which we are threatened; unwarranted therefore, by any of the reasoning used in its support, or any other arguments but such as may be deduced from maxims of general morality, and which experience has proved, as far as there is any experience relative to the case, not to be applicable.

The experiment which the Legislature has thought proper to encourage, ought therefore to be fairly tried, in order to see whether the extensive dominion, and mercantile character of the Company, may not, by the intervention of individual licenced traders, be so beneficially united as to produce higher advantages both to India, and Great Britain, to the Company, and the Country at large, than has yet been attained to. And for one, I should be for intrusting those Directors who may chuse to run the risk, with the trial of this experiment, in preference to other persons.

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Even if what has been much dwelt upon by Gentlemen, in which I think they have calumniated human nature, were true; that every man will do wrong in preference to right, if prompted by self-interest, and not checked by the apprehension of danger; I would, upon that very supposition, commit the execution of this experiment to the care of Directors, in preference to all men; because they, of all men cannot, in pursuing it, deviate from the correct path of duty, without public notice, public animadversion, and public punishment.

Mr. *Twining* in reply said, that if the manner of treating the Clause marked *M.M.* which referred to the new Oath, and had at one time made part of the Bill, while it was under the consideration of that Court, and of the House of Commons, had been attended with all the circumstances which the learned Serjeant had so minutely detailed, it was still more extraordinary that the essential alteration with respect to the Oath, by which *one* Oath was substituted in the room of *three*, should have been so entirely forgotten, as to have escaped the recollection of the Court of Directors, and of that Court, when he first brought the subject forward. Mr. *Twining* re-capitulated the particulars of what passed on his earliest notice of some Motion on the subject, and again reminded the Court of the impression which it had then made, and of the proceedings of the Court of Directors, in consequence of Mr. *Scott's* application for 810 Tons of Shipping, which, to his conception, clearly proved that neither the Directors in general, nor the Proprietors in general, were apprized, that according to the letter of the new Oath, it was declared to be perfectly legal, either for Directors to participate in the Private Trade, or to act as Agents. Having laid considerable stress on these circumstances, Mr. *Twining* once more touched on the general principle of his Motion, which, abstracted from any personal consideration, and viewed solely with regard to itself, he contended, was irresistible, and had that day been supported by arguments from behind and before the Bar, which must carry conviction to every unprejudiced mind, and had not been at all weakened, much less surmounted or destroyed by any reasoning that he had heard on the other side of the Question.

Mr. *Serjeant Watson* said, the point upon which they were at issue was, whether the Clause *M. M.* or that which now stands the 160th Section of the Act of Parliament, had received the sanction of the General Court; and he must explicitly repeat what he was prepared to prove,

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that

that the Clause *M. M.* never was agreed to by that Court, but the Clause enacted expressly was.

Mr. *Twining* said, he had not questioned any part of the learned Serjeant's detail of facts and circumstances. He had merely said, that if all that the learned Serjeant had stated was correct, it was the more extraordinary that the terms of the new Oath, so directly contradictory of the Clause of the Bill marked *M. M.* and the general spirit of the Act of Parliament, should have totally escaped the recollection of the Court of Directors, and of the General Court, when he first pointed it out.

Mr. *Grant* (a Director) here rose and said—"may I be permitted to obtrude myself for a moment upon the notice of the Court. I do so with the greater diffidence, because I mean not to speak to the general Question, but to a matter branching out of it, personal to myself. On this matter, I have addressed to the Court of Directors, a letter, too long, I apprehend, to go into now, but if this Court will allow me, I will state the import of it in two words. On my departure from Bengal, I left, among my outstanding concerns there, a share in an Indigo work. The produce of this work is sent home to me annually, and sold at the Company's sales. My wish is, to know whether this is considered as "trade." (There was a general answer from different parts of the Court, "no, no, no." And Mr. *Lushington* standing up, said, "no, that is the produce of an estate, we do not mean that.) Mr. *Grant* then added, "I beg leave to say, that I believe the Court of Directors is of the same opinion, which this Court has now expressed."

Mr. *Pattle* (a Director) said, as his name appeared in the list of persons who had received remittances from India, to the amount of 3,600*l.* he thought it right to explain that it arose from some bills sent from China, by the Captain of a ship from Botany Bay, to the house of Brickwood, Pattle, and Co. on which remittance no commission was drawn; that nevertheless, having reluctantly offered himself to the notice of the Proprietors, he thought it became him, as so many behind the Bar had delivered their opinions, to state his, which was, that it did not strike him, that the situations of Director and Agent, were at all incompatible, he felt he could conscientiously discharge his duty in both; that he should not shrink from that opinion, by the alarm that had been sounded that day, especially as the experience of many years, had shewn that the Directors (even under the old Act) had acted as Agents (as appear-

ed by a list read to the Court, extracted from the private Trade Accounts) no such fatal consequences had ensued, as they were now threatened with. The Directors had not swerved from their duty, or sacrificed the rights and interests of their Constituents, neither had the influence of their situation, operated to obtain for them a monopoly of Consignments from abroad, as it was notorious that several houses in the City, had each more Consignments in one year, than all the Directors in seven. Yet these were the two points on which the alarm was founded, that the duties of the two situations would clash, and the public be sacrificed at the shrine of private interest; and that the power and patronage of the Directors, would give them a monopoly of Agency, to the exclusion of all other Merchants? Why should this now happen, which never had occurred hitherto? And why should Gentlemen behind the Bar, express so much fear, and affect so much astonishment, that others should hold a different opinion, since they must have been privy to the practice of past years, and in their progress through the different Committees, have examined, passed, and signed the very accounts of Directors, claiming property as Agents and Attornies, under the old Act? That though he never had, Mr. Pattle said, and perhaps never might act as an Agent, still he thought it incumbent to state his opinion, and should have delivered it more at length, and offered other observations which occurred to him, if the lateness of the hour, and the general desire the Court seemed to express to have the Question put, did not impel him rather to apologize for so short, than to urge a longer intrusion; that if on the issue of the Question, his Constituents were disposed to adopt the object of the Motion, he should certainly not hesitate to make his opinion bend to theirs, and trusted he should not forfeit their favour for having preferred a candid avowal of his sentiments, to a silence which might have been subject to misconception.

Mr. *Manship* (a Director) said, he really had not been aware, when he saw his name in the list, that he had received any Bills from India, and had sent up stairs during the sitting of the Court, to know what the Bills were? and in consequence of that enquiry, it had been brought back to his recollection, that he had received Bills from India, which were made payable by him, on account of, and for the convenience of correspondents at Edinburgh, and in the North of England.

Mr. *Darell* (a Director) said, that the sum of 32.000l. which stood against his name, was chiefly a remittance from his son, in India.

Mr.

Mr. *Hunter* (a Director) said, the Bills of Exchange drawn payable to him, were for remittances of the private fortunes of individuals, his correspondents in India, to the amount of the sum stated in the List, so often referred to in the course of the day.

Mr. *Inglis* said, the small sum set against his name in the List, was a remittance of a part of the fortune which he acquired in *India*.

Mr. *Roberts* also accounted for his name appearing in the list of Directors, who had received Bills of Exchange to the amount of 6,600*l*.

Mr. *Baber* observed, that as the Honourable Gentleman, who brought forward the motion, had thought it proper, in what he had said, in reply to the Learned Serjeant, to revive the mention of the alteration of the Oath, a subject which he, and, he believed, every other Proprietor present, had, from the turn that the Debate had taken, and indeed from what the Hon. Proprietor had himself said, was not expected to be revived again, it became highly necessary, that he should do so much justice to the character of that Honourable Director, whose name had been so frequently mentioned in the course of the Debate, as to declare distinctly, whether after the papers, which he had heard read, he still thought any improper conduct whatever, was imputable to that Honourable Director?

Sir *Francis Baring* reminded the Court, that he had before observed that the letter to Mr. Scott, the letter to Mr. Smith, the Company's Solicitor, and the Minutes of the Court of Directors on the subject, had been communicated to Mr. Twining, previous to the adjourned consideration of the Motion taking place; he had nevertheless not thought proper to take any notice of them in his first speech of that day; for what reason he had chosen to avoid it, he himself best knew. Those papers had since been read, the fullest explanations had been furnished, and yet, said Sir Francis, Mr. Twining will not retract his assertions for what relates to the Oath, nor his insinuations which impeach the character and conduct of one Honourable Director (Mr. Scott.) The letter from the Solicitor, and the explanations from the Company's Counsel, must have convinced the Court, that Mr. Scott was perfectly innocent, and that no other, or better Oath could be framed by them, as professional men, under the present existing Laws; and it appears extraordinary, that the only Director who made any alteration in the new Oath, (Mr. Elphinstone) is the Gentleman who
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professes to have been ignorant of the contents. With regard to all that Mr. Twining has said, respecting the omission of the clause of the Bill, marked *M. M.* and the interested alteration of the Oath, (which he still continues to give the Court to believe, he is of opinion, took place,) I must Gentlemen remind you, that you were pleased to repose great confidence in me during the negotiation for the renewal of the Charter: You were pleased to desire that I would continue my services for the conclusion of that important business, although I was obliged to retire from the Direction in rotation, a circumstance unprecedented on your records? If, therefore, any *fly*, collusive purposes, were in contemplation! if the Oath was manufactured with a view to private emolument or advantage, the punishment due for such a crime, ought to fall with double vengeance on my head. But I can assert with confidence, (and I call upon Mr. Twining, or any other person, to contradict me if I am mistaken) that every part of the negotiation, every Clause in the Act of Parliament, was made as public as possible, and went through the Committee of Correspondence, the Court of Directors, and General Court in a regular manner, subject to the alteration made in each; and that no Clause, or part of the Bill, received more attention from the Court of Directors, than the Clause which contains the Oath.

Sir Francis concluded with declaring once more, that if the Hon. Gentleman did not fairly admit, that the matter respecting the conduct of Mr. Scott, was cleared up to his satisfaction, he should go away, under the conviction that Mr. Twining's Book was a Calumny on the Hon. Gentleman next him, and the Directors in general.

A very loud and general cry of *Question! Question!*

Mr. *Henchman* rose, and was obliged to exert himself to obtain a hearing. At length the clamour subsided, and Mr. *Henchman* said, Mr. Chairman, I beg the Hon. Mover may be called on, as he persists that the alteration in the Oath, was done without the knowledge of this Court, and improperly, by some person or other, to point out who he means; does he still mean Mr. Scott? Does he mean any other Director? Or does he mean me (Mr. *Henchman*) or the Solicitor? Who does he intend to charge? This sort of insinuation is not fair or handsome; the Hon. Gentleman ought, and I hope will, say on whom he charges a transaction, which he has set forth in such a dishonourable light.

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No

No sooner had Mr. Henchman finished, than the clamour for the *Question*, was again more violent than before.

Mr. *Barwis*, however thought proper to brave the storm, and had the good fortune to surmount it, he then said, he had made many attempts to be heard, but Gentlemen had been so eager to speak, that they became quite angry; he therefore desired to be heard *at last*, for he assured the Chairman and the Court, he was in a very good humour, and was not in the least angry.

He said, as the Honourable Mover had professed in his speech, that he would most readily confess any alteration of mind with regard to the Motion, thinking it more honourable to do so, than to continue pertinaciously in the wrong; so he (Mr. Barwis), with the same sense of what was honourable for him to do, had to confess his conviction, upon the most serious investigation, of the great impolicy and imprudence of the present Motion.

He said, he founded his reasoning on a clear Act of Parliament, which had been proved before the Court, to have gone through all the necessary forms of an Act of Parliament, under the most exact and closest examination. Nay that the very Oath itself, which had so imprudently been the subject of very disagreeable discussion and animadversion had been read in the Court in the most regular manner, clearly unattended to by the Honourable Mover.

It most clearly appeared by that Act of Parliament, that it was not the intention of the Company, or of the Government, to exclude any British subject (Directors or others), from a participation in the legal private trade to and from India. It was not for him, he said, who had been accustomed to respect the law of his country, to say what might be the reasons that operated on the minds of the Legislature in the formation of the Act; they might have many reasons that he could not be informed of; but he knew that it was his duty to regulate his conduct by the Act; and he could not think it a wise thing for this Court to enact any By-Law, subversive of the intention of an Act of Parliament. These were the principal reasons which induced Mr. Barwis to change his mind as to the Motion before the Court.

He

He then adverted to the speculative distinctions and moral profings of some speakers in the Debate, which had taken up so much time in the Court, and said he would moralize and speculate a little too, with permission. There had been much reasoning upon a theoretical *possibility* of undue influence arising from the Agency of a Director: but certainly it would have been much more prudent to have waited for *a few facts*, (for the Mover had not produced *one single fact*) which would have been much more convincing than any vague arguments of *possibility*. It is always wiser to wait for facts, *in cases of great uncertainty, and where no important injury can ensue by delay.*

Mr. Barwis proceeded to say, that *under the Act of Parliament*, great Law Authorities had declared, that Directors might Trade, or act as Agents, in common with all other British subjects.

“ That a By-Law prohibiting Directors from carrying on private Trade, either as Principal or Agent, will be valid; and consequently a Director contravening such By-Law, might be removed from his Office.”

“ That a By-Law rendering a person ineligible to the Direction, for a previous act in conformity with the general Law, cannot prevail.”

Messrs. SCOTT, MITFORD and ROUS.

Notwithstanding the great authorities here produced, I cannot get rid of my belief, that the By-Laws of any Corporate Body, which stand in contradiction to the Laws of the Land, and which may injure the rights and property of a British subject, *cannot prevail*. However, it certainly appears to me to be unjust, that a Merchant, or Agent, in a Trade allowed and encouraged by an Act of Parliament, and *equally open to all British subjects, a Trade quite distinct and separated from that of the Company*, should be excluded from any participation in such Trade, merely because he is a Director of the Company's Trade: especially, as Agency has been practised these hundred years, without one evidence of any evil consequences having arisen from it.

For the Trade being open to all British subjects, and so described, defined, and regulated by the Act, *as not to interfere with the Trade of the Company*, it certainly can very little concern the Company, who may happen

happen to be Merchants or Agents in such an open Trade. In short, it is a Trade *allowed to all*, and in which the Company has no concern at all, *as a Trade*, their Trade being of a different description. The Company indeed, is to provide tonnage, &c. for the carrying on of this private Trade; by which they must always know what Trade is carried on, and whether illegally or injuriously to themselves or not.

I have always understood, that this separate private Trade, was wisely made general and open to all British subjects by Government, as the means of producing the most salutary effects in our Manufactures, Commerce, and Navigation, by taking it out of the hands of injurious Foreigners, and other improper speculators; and bringing it to this Country legally.

And what man among us, who knows any thing of our extensive dominions in India, and immense commerce resulting from our vast possessions there, would not be anxious to draw as much of that commerce to this country as he possibly could, by every honourable exertion of industry, enterprize, and ability, for which this Nation has so long been renowned and admired? There certainly never was presented to this Nation, so great a source of wealth and power, as India at this moment exhibits, if the utmost advantages be made of our situation, consistently with the true interest and happiness of that distant Country and Great-Britain.

I confess I am one of those, who think it *always found policy, and true wisdom*, to make those Nations, or People, who fall under our dominion, feel themselves more happy and prosperous by the change. It binds their affections, and secures our authority; but it is most particularly indispensable in a Dominion so distant from the seat of Government as India is from England. I have therefore always had the strongest inclination (ever since I began to think of India Affairs), to promote the *Commerce and the prosperity of that Country, in connection with that of Great-Britain*. Hence it was, I saw with regret, the great interference of Foreigners; and the very reprehensible connection, formed by some considerable British Subjects with Foreigners, both to the injury of this Company, and of their Country. And I verily believe it was the laudable intention of His Majesty's Ministers in the Act of Parliament (*by which the Company, as well as all other British Subjects, are now to be governed*), to lay open the *Commerce between India and this Country, as much as possible, consistently with*

with justice to the Company, and the interest of the Empire. And what can so effectually counteract the interference of Foreigners, as permitting and inviting all British subjects, *without exception*, (under proper regulations with regard to the Company), to exert their great commercial talents, and to employ their powerful capitals, in this very lucrative and extensive trade? I must confess, that as this trade is *so particularly and expressly separated from that of the Company*, my fears of any corruption in the Direction have entirely vanished. Nor am I certain they can derive any material advantage from their situation as Directors; because it is well known, that intelligence from Merchants in India, and other private individuals, is generally received earlier, and with much more *variety of information*, concerning merchandize, and many other things, than the regular official accounts sent to the Company. Indeed, as to the trade of the Company, and of private Merchants, are to be held quite distinct and separate, it would seem invidious to exclude any Merchant from a participation in that trade, on account of any office he might happen to fill in the Company's Service; and it is clear the Act of Parliament meant no such exclusion.

Much has been said about Oaths. I do not esteem Oaths in former Charters to have any force or validity, from the moment of the late Act of Parliament granting a new Charter became *in full force*. For in reality, the new Charter is granted on widely different grounds from any former Charter granted to the East India Company. Their affairs are become so extensive, and so widely different in a National light, from what they were formerly; their conquests have been so many, their revenues are so great, and their empires so extraordinary, that the true spirit of commerce had almost been forgotten amidst such a profusion of political successes. It is most certain, that the Company have had a losing commerce for many years past, as their own published accounts shew. And there can be little doubt, that during the formation of the present Charter, it was a matter of some deliberation, whether it would not be better for both countries to lay the whole Trade of India entirely open for all British Subjects.

The Government of India, most certainly is not in the hands of the Company; and I consider India and the Company *very properly* subject to the controul of his Majesty's commissioners.

It is an Empire too great and important to be any longer subject to any body of Merchants however able, and however respectable their abilities and characters: from when I infer, that any apprehensions from the *power* of Directors as Agents, to acquire superior information; or to screen delinquency in any of their correspondents, must stand on the same footing with any other Agents. We must otherwise have heard of some complaints. For, in our present situation, all the trade of India, that which is carried on by the Company, as well as that carried on by private legal Traders, or Agents, are entirely under legal authority, enforced and regulated by the Board of Commissioners for India affairs. And if any improper or unjust influence should make its appearance, either in India or in England, there can be no doubt of its early detection: for the discerning eyes of Directors not Agents, and more interested and watchful eyes of Agents not Directors, will certainly not permit any injurious irregularity to pass by, without observation. Nor must the scrutinizing attention of Proprietors be left out of the account. I for one promise to lay before the Proprietors the first instance of unfair practices, that shall come clearly home to any reasonable man's conviction.

But is it a thing of no importance to endeavour to drive from the Direction, men of such tried abilities and integrity, as would be lost to the Company by the success of such a Motion? Let Gentlemen consider how strenuously they contended to derive every possible advantage for the Company at the renewal of the Charter; and then answer the Question.

Without the least reflection on any Gentleman in the Honourable Court, for which I sincerely entertain all due respect, we should certainly be deprived of Gentlemen of very extraordinary practical abilities. And are we sure they would be replaced by others equally competent in commercial affairs? Equally enlarged in their views of the general and relative interests of India and this Country? My experience compels me to say, that it is not very probable.

But I have been told there is a particular body of men, who, *very erroneously*, think it their interest to drive a certain Director (Mr. D. Scott) from his seat, which is the cause of the violent attack made upon him. I cannot answer for the truth of such a report; but I must think they do not well understand their own interest, who will put themselves at enmity with so honourable and able a man. Nothing could be more open and direct than his whole conduct has been in the transaction complained

plained of, nothing more legal or more honourable, and his accusers at last have been compelled to subscribe to the purity of his intentions and practice.

Things are not now as they have been in India. Secrecy and mystery are no longer cultivated concerning the Trade of that Country, and every British subject may now be as well and as easily informed with regard to the Trade between India, and this Country, as he can be of the Trade of any other of our settlements or colonies.

As to the influence which may arise between Agents and their correspondents, it is certain that there will arise influences of one sort or other in all human connections: Men cannot act without motives; and the only distinction worthy of much notice, is, whether their motives be just or not? and whether the influences created by the motives be legal and equitable? for all such influences promote the interest of the parties and the happiness of the world.

An honourable Director (Mr. Charles Grant) behind the Bar, I am told, has in India, some property in an Indigo plantation. He has a stake then in India, and must very naturally be concerned for the prosperity of that Country. That Gentleman knows that no prosperity will be either lasting or satisfactory, but what is honourable. Can there be a more proper character for the Direction of our affairs?

In this Country has it not always been maintained, that men of great property, men who have great stakes to lose or to preserve, are naturally most interested *in the safety of the state*, and therefore are generally the properest persons to conduct the affairs of it?

I can find no fault with any interest, influence, or power, that any Director, or other men, may possess or acquire in India, (for such things will naturally exist in all Countries) if they be exercised fairly, and for the general interest of both Countries.

I can say, from my own experience in trade, (as no doubt many Gentlemen here can) that though my connexions and correspondents are very numerous, and from whom I am always ready to acknowledge many and lasting obligations, yet have I never felt the least weight of any *improper influence* from them in my life. Nay, I am perfectly convinced

vinced, that if they had thought me mean enough to submit to such *improper influence*, I should have lost their confidence, and destroyed the credit of the House. Men are not disposed willingly to trust their interested concerns in the hands of men of whose integrity they are in doubt.

Indeed, I am persuaded that the Company's Trade, and the Private Trade will prove mutually beneficial to each, by enforcing economy and strict mercantile management in the Trade of India on both Parties. I shall therefore vote against the Motion for a new By-law, and recommend a ready acquiescence in the Act of Parliament under which we hold our Charter.

Alderman *Pickett* congratulated himself, and the Court, that a proposition, so clear in its principle, and so public spirited in its nature, had been so honourably and zealously supported—not only by the Proprietors without the Bar; but by so many of the Gentlemen who were in the Direction. He was of opinion that men in all Public Trusts, should not only act with impartiality and integrity, but that they ought to adopt such measures, as would prevent the possibility of doing otherwise, either by themselves or successors. Since he had held a responsible situation, he had been in the habit of introducing and supporting propositions of the same tendency, but he had the misfortune to say, that he was generally in a Minority. The prevalence of interest, influence, and connexion, were seldom to be counter-balanced. He had always contended that there was the greatest impropriety in Aldermen of London, accepting beneficial places, in any of the departments over which, *by virtue of office*, they held controlling powers; or any lucrative appointments that might interfere with their situations as independent Magistrates. He made several allusions to self-denying ordinances, which he had proposed in the Common Council, and other public bodies, in which he was always in a Minority. He had brought forward propositions for a more fair and impartial mode of nomination and election, at the Bank of England, as well as in other Corporations. But on these subjects, he had always been unsuccessful, *although the principle was every where admitted*. But he hoped to God, that that day he should have the honour to be in a Majority. It would be a noble example, and manly precedent, for all other public bodies throughout the Kingdom. They had heard a great many arguments, and a great many compliments had been exchanged. Much confession

session had been made—and an infinite deal about respectability of character had been said behind the Bar—and the warmest opponents to the measure, had unequivocally admitted the principle to be right. From the whole, he was much more convinced of the *necessity*, as well as propriety, of adopting the measure, than when he came into the room. He was not able to account, *from any arguments that he had heard*, for the conversion of the worthy Proprietor, who had just observed that he came with a view to support the Motion, but should now resist it.

The Alderman said, it was an invariable maxim with him, to support or oppose measures according as their merit or demerit appeared to him—without respect to the persons who proposed them; and however excellent characters might be, they ought not to be stated to supply the place of argument, in support of any specific Proposition. It was not to be supposed that Gentlemen would be advanced to high situations of responsibility, without great respectability of characters, which was no doubt the case behind the Bar. But men of the best characters, were subject to error, and not exempt from the intoxicating influence of wealth and power and sometimes did wrong, as well as right; and he was free to declare, that he had witnessed more partiality, and more injustice, from persons of grave and specious deportment, with good characters, in high departments of trust, than from persons less elevated in their situations. He was astonished at the proposition of a respectable Proprietor, to separate the Motion. It appeared a distinction, without a meaning, as respective of the spirit of the Proposition now under discussion. If by trading as Principals or Agents, great profits, and partial advantages, occurred to the Directors, the temptation was the same. If the benefits were so small as had been stated, why did Gentlemen so warmly contend against the Motion? Should it not be adopted, for the gratification of the Proprietors, who had a right to every satisfaction that could be given them. There was great care taken that the subordinate Servants of the Company, should not have any concern in Private Trade. He thought, if the Motion was carried, it would be of great benefit to society; and the Gentleman who introduced it, and the Directors, and others, who supported it, should always have his most hearty thanks. It would be a precedent worth speaking of in the different Courts and Committees, where he had the honour to have a voice. He trusted it would also have its due weight and consideration in the Houses of Parliament.

The *Question* was at length about to be put by the Chairman, when

Mr. *Knox* observed, that the Motion needed more definite precision of terms and explanation, or else how were they to understand, what was meant by the words *Private Trade to and from India*? Did they include the trade to Nootka-Sound, or the Western-Fishery?

The cry of *Question* being revived, the CHAIRMAN with difficulty obtained silence, he said the Court were certainly obliged to every Gentleman, who pointed out a defect in the terms of the *Question*, as the setting it to rights early, might prevent much future doubt and difficulty.

Mr. *Twining* said, his Motion, if carried, would only be a Resolution of the Court, and must be formed into the shape of a By-Law, to give it efficacy. The terms of which would afterwards be to be decided upon.

Alderman *Le Mesurier* begged to remark to the Court, that when once the Motion had passed in a law, it would be too late for any Hon. Gentleman to say, he did not mean to apply it to such and such particular cases, but the law, when made, must be put into execution fairly and strictly, without considering who it might effect; and he was sure that if it passed in its present form, the case of Mr. Grant, and every other case which had been mentioned, would be comprehended in the general prohibition.*

Just as the *Question* was about to be put, Mr. *Jackson* rose, and gave notice that as soon as the *Question* before the Court should be disposed of, he should move, "That this Court, entertaining the highest

* In case the Motion passes, and is framed into a By-Law, the following prohibitions, among others, will be laid on Directors, being Merchants, viz.

They will be prohibited, not only from receiving and shipping Goods, but also from accepting and receiving Bills, Money, or other effects belonging to Persons in India.—Also from being concerned in any ships employed on the Southern Whale Fishery, or bound to New South Wales, in the trade to the North West Coast of America.—Also from insuring or underwriting India Ships or property.—Also from carrying on any manufacture, either in India or England, of Articles for the markets to or from India.—On the other hand, Bankers (who transact business without charging Commission) may receive remittance to any amount from India, and apply the discount, and other emoluments arising from the use of the money, to their own benefit.

highest opinion of the honour, and of the integrity of David Scott, Esq. do approve and confirm the Resolutions of the Court of Directors, which had been now read."

Mr. Jackson said, he thought this but common justice to the Hon. Director, and he would add, to the Hon. Gentleman likewise who had brought forward the business of the day, and who, he was sure, wished the Court to rise in a temper of perfect reconciliation. Mr. Jackson added, that he had forborne offering his sentiments upon the main Question, finding it in much abler hands, but he thought the Debate throughout, had been attended with much mistatement, and misconception.

It was afterwards agreed that Mr. *Lushington* should make the Motion, and Mr. *Jackson* second it.

The Chairman here read the Question, and was about to put it to the Vote, when

Mr. *Serjeant Watson* interposed and said, the Question was too important to be decided by the shew of hands, he therefore moved that it be decided by Ballot, and presented the names of eight Proprietors who concurred with him to demand the Ballot.

The names of the Nine were read as follows :

Messrs. HENCHMAN,

BABER,

PRINSEP,

WYNCH,

MONTGOMERY CAMPBELL,

ALLARDYCE,

TOLFREY,

COLONEL WOOD,

And

SERJEANT WATSON.

A doubt was started, whether that was the proper stage of the business to demand a Ballot.

Mr. *Rous* (the Company's Counsel) said it was, and read the By-Law regulating Ballots, to confirm his opinion.

The CHAIRMAN said, as it was so near the holidays, it would be advisable to postpone the Ballot, till they were over.

After

After some conversation, the Ballot was fixed (by common consent) for the 14th of January.

Mr. *Lusington* then rose and said, he meant to move a proposition which he would content himself with simply stating, without saying any thing respecting it; as in fact the subject of his motion would sufficiently speak for itself, and if he were to say any thing in support of it, it might possibly call forth argument from others, which at that late hour would not be very satisfactory to the impatience of the Court. His motion was "That this Court do confirm the Resolutions of the Court of Directors of the 20th of November last."

Mr. *Jackson* seconded the motion and it was agreed to unanimously.

Mr. *Serjeant Watson* said, that it was unpleasant to him to introduce any Question that might appear to arise out of personal feelings of his own; what he was about to move, however, at the same time that it might indicate a desire on his part, to stand well in the opinion of the Court with respect to his never venturing an assertion as to any matter of fact which he did not know to be true, was in his view of it as well as in the manner in which it had been considered by the Hon. Proprietor himself, (Mr. *Twining*) important towards the right decision of the Question to be decided by ballot. And, after observing that he was ready to proceed then to the proof, or to give the Hon. Gentleman any other day to prepare himself to controvert that proof, or to refer the investigation to a Committee, who should enquire and report; he concluded with moving, that, "It appears to this Court that the Clause marked *MM* was never agreed to by a General Court, or the Court of Directors, but that the Clause substituted in the place thereof, as it now stands in the Act of Parliament, 33d Geo. III. c. 52. s. 160. was read and approved in a General Court, whilst the Bill was pending in the House of Commons." Whereupon

Mr. *Twining* said, the learned Serjeant had misapprehended him, he neither doubted or denied any part of the learned Gentleman's statement.

This matter being satisfactorily adjusted, the CHAIRMAN put the Question of adjournment which was *una voce* agreed to, it being between six and seven o'clock.

We subjoin the following Observation, as worthy public notice.—Of the Twenty-four Gentlemen now in the Direction, four were in the Company's Civil and Military Line in India and China, five were Commanders of Ships, three are Gentlemen who have gained fortunes in India, but not in the Company's line, three are Gentlemen of independent fortunes, three are Bankers, one is a Banker and Merchant, and four only, are London Merchants.



The following having, through extreme hurry, so far escaped the eye of the Corrector of the Press, as to appear inaccurately arranged with respect to the figures, in the Reporter's last Publication, it is reprinted with more correctness.

Sale amount of Priviledged Goods, consigned to the DIRECTORS of the EAST INDIA COMPANY, from the years 1785, to 1793, both inclusive.

		£.	s.	d.
In 1785	None.			
1786	To Messrs. Edmund Boem, and Co.	-	2,734	3 8
1787	To Messrs. I. and F. Baring, and Co. Raw Silk,	-	12,455	15 10
	Ditto, Piece Goods,	-	17,360	3 6
	Ditto Ditto	-	11,600	4 0
	To Messrs Cheap, Loughnan, and Steel, Indigo,	-	1,567	11 1
1788	To Messrs. I. and F. Baring, and Co. Raw Silk	-	9,038	4 10
	To I. Sparkes, Esq. Ditto	-	1,709	5 0
1789	To Messrs. Townson and Stuart, Piece Goods	-	3,017	14 6
1790	None.			
1791	To Messrs. Cheap and Loughnan, Gum,	-	38	17 7
	To Ditto, Ditto Piece Goods,	-	3,272	0 0
1792	None.			
1793	To Nathaniel Smith, Esq. Piece Goods,	-	23,460	12 8
1794	Consignments to the houses of Messrs. D. Scott, and Co. C. Grant, Esqrs. and Messrs Cheap and Loughnan, the value of which cannot be ascertained. as the goods are not all sold.			

